

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 308/98

Friday, this the 1st day of May, 1998.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. V. Sarasalochanan
Sub Divisional Engineer (T)
Office of the General Manager
Telecom District, Kannur-2.
2. E.P. Padmanabhan
Sub Divisional Engineer (T)
Chief Telegraph Office
Kannur-1.
3. K. Damodaran
Sub Divisional Engineer (Vig.)
Office of the General Manager
Telecom District, Calicut.
4. M. Jaya
Sub Divisional Engineer (PG)
Office of the General Manager
Telecom District., Kozhikode.
5. K. Sundaran
Sub Divisional Engineer (OP)
Office of the General Manager
Telecom District., Calicut.
6. C.V.Ramana
Junior Telecom Officer
Chief Telegraph Office
Calicut.
7. K.K.Sivasankaran
Public Relation Officer
Office of the General Manager
Telecom District, Trissur.
8. A.M.Appu
Sub Divisional Engineer (G)
Office of the General Manager
Telecom District, Trissur.
9. G. Satheesan
Sub Divisional Engineer (T)
Chief Telegraph Office
Palakkad.
10. Padmaja Sasidharan
Sub Divisional Engineer (Estt.)
Office of the General Manager
Telecom District, Trissur.

11. K. Venkateswara Iyer
Junior Telecom Officer
Telecom Workshop
Office of the Chief General Manager Telecom
Kerala Circle, Thiruvananthapuram.
 12. G.P. Gopachandran Nair
Junior Telecom Officer
Central Telegraph Office
Thiruvananthapuram.
 13. K.K. Muraleedhara Kaimal
Sub Divisional Engineer
Regional Telecom Training Centre
Thiruvananthapuram.
 14. K. Chandran
Sub Divisional Engineer
Indoor Maintenance
Central Telegraph Office
Calicut
 15. S. Jahangeer
Commercial Officer
Office of the General Manager Telecom
Kollam.
 16. P. Ravindran
Junior Telecom Officer
Circle Telecom Training Centre
Thiruvananthapuram.
 17. P.K. Raveendranathan Nair
Junior Telecom Officer
Telegraph Office, Mavelikkara.Applicants.
- (By advocate M/s Santhosh & Rajan)

Versus

1. Union of India represented by
the Secretary
Ministry of Communication
New Delhi.
2. The Chairman
Telecommunication
Sanchar Bhavan
New Delhi.
3. The Director General
Dept. of Communication
New Delhi.
4. The Chief General Manager
Kerala Telecom Circle
Thiruvananthapuram.
5. Mr George Varghese
Sub Divisional Engineer
Office of the Sub Divisional Engineer
Chittoor Road, Kochi.Respondents.

(By advocate M/s Santhosh & Rajan)

6. P Senthilkumaralingam,
Junior Telecom Officer,
Office of the Divisional Engineer
(Power & Air Conditioning)
Telecommunication, Haddoms Road,
Telephone Exchange, Mungambhagam,
Chennai-600 034.

- Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC(rep. for R.1 to 4)

By Advocate Mr Shafik MA(for R.5)

By Advocate Mr OV Radhakrishnan(for R.6)

The application having been heard on 1.4.98, the
Tribunal on 1.5.98 delivered the following:

O R D E R

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

In this case the applicants 17 in number who are now
working as Junior Telecom Officers(JTOs) ~~xxxxxxxxxxxxxxxxxxxx~~ ^{L.S.}
~~xxxxxxxxxxxxxxxxxxxx~~ ^{L.S.} joined the Department of Communication,
Govt. of India originally as Assistant Superintendents of Telegraph
Traffic(ASTTs for short) in the Telegraph Arm ~~xxxxxx~~ ^{L.S.} of the
Department of Telecommunication, i.e.(DOT). They feel aggrieved
by the order dated 26.9.96 ^{L.S.} of the DOT at A9 issuing guidelines for
making local officiating arrangements in TES Group
B(Telecommunication Engineering Service Group B) which is the
promotional cadre for the applicants as JTOs. Under these
guidelines, the JTOs in which category the applicants have got
merged, who have qualified at the Departmental Qualifying
examinations prescribed under the Recruitment Rules regulating
promotion to TES Group B, should be given preference over the
JTOs who have not so qualified themselves. The applicants have
a grievance also against the order dated 20.8.97 at A10 issued
by the DOT for regulating the process of screening for regular
promotions from the cadre of JTOs to TES Group B. That order
similarly indicates that precedence should be given to the JTOs
who have qualified in the qualifying examinations prescribed for

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TES Group B for regular promotion for the vacancies occurring upto 22.7.96 i.e. the date of coming into force of the amended TES Group B Recruitment Rules which for the first time removed the requirement of passing the said qualifying examinations for the purpose of promotion. The applicants have further challenged the order issued by the DOT dated 13.1.98 at All which says that the date of effective merger of the ASTTs with the JTOs shall be 19.2.96, i.e. the date of commencement of the Recruitment Rules for the integrated post of JTOs comprising the erstwhile ASTTs and JTOs. This order has been issued in modification of the earlier order from the DOT dated 5.4.94 which had stated ~~that says~~ ^{2.9} that the merger of these two cadres of ASTTs and JTOs would come into effect from 1.4.94. The applicants have impugned all these three orders.

2. The case of the applicants is that their work and the work of the erstwhile Junior Engineer(JE)s, subsequently redesignated as JTOs in the Engineering Service of the DOT, have been more or less equal. In recognition of that fact, the ASTTs were given the same scale of pay as JTOs w.e.f. 1.1.86. Under A1 order dated 5.4.94 issued by the respondent No.1, the Secretary, Ministry of Communication, New Delhi, these two cadres were merged w.e.f. 1.4.94. However, there was a long and undue delay in taking up subsequent and follow-up actions to carry out effectively the scheme of merger of the two cadre of ASTT and JTO as laid down under the A1 order. Then the order of the Principal Bench dated 10.10.96 was issued directing that the combined All India draft seniority list of ASTT and JTO should be published within a period of three months. Accordingly, the draft combined All India seniority list of these two cadres was published by DOT at A5 dated 16.3.95.

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3. The applicants have alleged that the delay in the publication of the combined seniority list was deliberate and that it was done to help the erstwhile JTOs in particular. They have further alleged that the DOT could not legally have postponed the date of the merger of these two cadres from 1.4.94 to 9.2.96. That action of DOT has resulted in discrimination against the applicants and should be held as invalid. They have stressed that as the erstwhile ASTTs, they are not required to qualify any departmental qualifying examination, since no qualifying examination has ever been prescribed for them, even though prescription of a qualifying examination, for them was originally contemplated. The applicants have further argued that for promotion to the next promotional cadre of TES Group B for the merged cadre of JTOs, passing of the qualifying examination can not be legally insisted upon by the DOT ^{in their case} and therefore no preference can be given to the qualified JTOs at the stage of the screening of JTOs for the purpose of regular promotions to the cadre of TES Group B. According to ^{the} applicants, if any such preference is given to the qualified JTOs, i.e. those JTOs who have already passed the qualifying examination, it would be discriminatory and violative of the principles of natural justice. Such an action is tantamount to taking away their vested legal right.

4. The applicants have urged therefore that the letter issued at A9 dated 26.9.96 and the guidelines issued at A10 for screening the JTOs for the purpose of promotion to the post of TES Group B cadre dated 20.8.97 ^{giving preference to qualified JTOs} are therefore untenable.

5. The applicants have finally prayed for the following reliefs:

- "i) to issue a direction to the respondents to implement the Annexure-A1 order in toto;
- ii) to issue a direction to promote the applicants to the post of Group B from the combined All India Gradation list of Junior Telecom Officers;
- iii) to set aside the orders as per

Annexure-A9, A10, and A11, and

iv) to grant such other further reliefs as this Hon'ble Tribunal deem fit and proper"

6. The official respondents 1 to 4 have strongly contested the claims made on behalf of the applicants. They have pointed out that though originally the DOT had issued administrative guidelines announcing the decision of merger of the two cadres of ASTTs and JTOs into the combined cadre of JTOs by their order at A1 dated 5.4.94, those guidelines at A1 did not clearly amount to a legal merger of these two cadres, which have been traditionally filled up through different modes of recruitment and have also had different and distinct channels of promotions. In the case of JTOs, the next promotion has been to the cadre of TES Group B (Telecom Engineering Service Group B). In the case of ASTTs the next promotion has been to TTS Group B (Telegraph Traffic Service Group B) cadre. The official respondents have further explained that after A1 order was issued describing the manner in which the merger of these two cadres of ASTT and JTO should be effected, the time was taken for consultation with the concerned ministries in the Govt. of India for finalising the modalities and legal formalities involved in the merger. In the meanwhile, the Kerala Circle had published a draft combined seniority list on 5.12.94. The All India Association of the ASTTs approached the Principal Bench of the Tribunal and the Principal Bench in its order in M.A.1982/96 in O.A.286/96 dated 10.10.96 directed the DOT to publish the combined draft All India seniority list of the merged cadre of Junior Telecom Officers comprising the erstwhile cadre of ASTT and JTO in accordance with the scheme incorporated in the DOT letter dated 5.4.94(A1) within three months from the date of receipt of a copy of that order. Accordingly the DOT circulated a combined provisional All India gradation list of JTO comprising the erstwhile ASST and JTO dated 16.3.97 at A5.

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7. Respondent No.5 has specifically pointed out that even though these actions had been initiated, orders were passed by this Bench when that process was underway. This Bench laid down the dictum that by an administrative order like A1 these cadres set up under different statutory rules as distinct cadres could not be merged. The officials belonging to ^{the feeder} ~~that~~ categories for promotion to the cadre of ASTTs, i.e. the Telegraph Assistants/Telegraphists etc. approached this Bench for promotion to the cadre of ASTT. DOT took the position in that context before this Bench that the cadre of ASTTs have been merged in the cadre of JTOs and therefore no promotions could be effected to the cadre of JTOs from those feeder categories. DOT also referred to the scheme of merger under A1 in support of their contention. However, this Bench held in that case O.A.1610/94 by the order dated 1.2.95 that it was puerile to contend that a post created by statutory rules under Article 309 of the Constitution could be abolished by an executive order like A1. The Bench finally declared that the post of ASTT could not be abolished by a mere executive order. The Bench also observed that if statutory rules were modified or superseded by statutory rules directions given by the Bench would ^{not} ~~not~~ affect the position thereafter.

8. Further, it has been brought to our notice by the 5th respondent that some of the ASTTs themselves approached this Bench in O.A.925/95 and this Bench in its order dated 26.7.95 in that O.A. noted that ASTTs recently redesignated as JTOs by an executive order had sought promotion to Telegraph Engineering Service Group B based only on their seniority. It was further observed by the Bench ^{that} the Standing Counsel for DOT gave an undertaking that the applicants in that OA, who were the

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erstwhile ASTTs, would be promoted to Telegraph Traffic Service Group B, and not to Telegraph Engineering Service Group B, based on their seniority. The Bench specifically made a mention while passing the order in that OA.925/95 that the applicants therein i.e. the erstwhile ASTTs redesignated as JTOs were satisfied with that dispensation. The OA was disposed of on that basis.

9. References to these orders passed by the Bench have been made specifically in the reply statement filed by the (additional) respondent 5.

10. The official respondents 1 to 4 have not specifically made a reference to these orders of this Bench. They have, however, contended that because of the minimum time required in formulating statutory recruitment rules merging two distinct cadres, the effective date of merger of these two cadres of ASTT and JTO eventually had to be declared under All, i.e. the impugned order w.e.f. 8.2.86 when the statutorily prescribed recruitment rules for the combined cadre for JTOs comprising the erstwhile ASTTs and JTOs could be brought into force.

11. They have argued finally that there is nothing in this process which can be called illegal and therefore the All order should be held as valid. The official respondents have further urged that the impugned orders at A9 and A10 which do indicate that for the purpose of regular promotions to the cadre of TES Group B against the vacancies in that promotional cadre, the JTOs, who have already qualified under the then and relevant recruitment rules had to ^{be} accorded ^{as} preference over others who had not so qualified themselves. ^{as are valid} The official respondents have pointed out that they are legally bound to consider for regular promotion, against the vacancies occurring upto the time when the pre -1996 recruitment rules for TES Group B were in force,

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only those JTOs who were eligible for promotion to TES Group B under those pre-1996 recruitment rules. Therefore, till the prescription of the departmental qualifying examination was statutorily and validly prescribed and until it was statutorily and validly removed, the officers qualified under those rules would have to be given preference over others. The official respondents have next pointed out that it is because of these considerations that under the impugned orders at A9 and A10 for the vacancies occurring upto 22.7.96, preference has been ordered to be given to the qualified JTOs. The 5th additional respondent, who is a party respondent and belongs to the cadre of erstwhile JTOs, has pointed out specifically that the erstwhile ASTTs cannot claim that they continue to have the benefit of promotion to TES Group B without qualifying for promotion in the manner laid down in the statutorily prescribed Recruitment Rules only on the ground that in the past i.e. before their merger they were not required to qualify themselves ^{49 departmentally} ~~differently~~ for further promotion though to a different cadre called TTS(Group B). According to the 5th respondent such a contention is untenable.

112. We have carefully gone through the pleadings and have heard the learned counsel appearing for the parties. Though originally it was felt that this OA could also be disposed of under a common order along with O.A.1497/96, O.A.297/98, O.A.1186/97 and O.A.629/97 which are connected cases, at the stage of arguments we recognised that the present case needed to be treated separately. In some of those OAs the orders of A9 and ⁴⁹ A10, impugned here, have been challenged. There these two orders have been challenged by the erstwhile JTOs who have not qualified themselves at the departmental qualifying examinations for the major reason that the qualifying examinations have not been held after 1991.

13. For the purpose of an adequate and proper adjudication of the issues involved in the OA, we do not consider it necessary to examine the entire gamut of controversies which has been ~~raised~~ ^{raised & revised} in other OAs. It will be sufficient in our opinion to focus on the critical issues which have been found particularly involved in this O.A.

14. The first important point for consideration is whether the applicants in the present OA had in fact acquired some vested right under A1 order detailing a scheme of merger of the two erstwhile cadres of ASTTs and JE/JTOs.

15. We are of the considered view that in the light of the subsequent developments following the scheme detailed under A1, including the orders in the two OAs passed by this Bench, and specifically referred to in the reply statement filed by the 5th additional respondent, the two erstwhile cadres of ASTT and JTOs cannot legally be held to have been merged w.e.f. 1.4.94. In fact though the applicants have relied on A5, which ~~is~~ ^{is} actually ~~only~~ ^{only} circulates the combined provisional All India gradation list of JTOs, comprising the erstwhile ASTTs and JTOs, dated 16.6.97, it is clear that this combined seniority list is the result of the follow up actions taken in compliance with the order of the Principal Bench of the Tribunal in O.A.286/96. However, it has been mentioned in the same A5 specifically that the eligibility list nevertheless will be prepared based on the recruitment rules applicable from time to time. That can only mean ^{that} when the officers of the merged cadre are required to be placed ~~in~~ ⁱⁿ in the eligibility list,, they would be governed by the recruitment rules prescribed for regulating the preparation of such an eligibility list.

16. There can be no doubt that for promotion to the post of TES Group B under the pre-1996 recruitment rules, eligibility of the feeder cadre of JTOs was based on a pass in the

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departmental qualifying examination prescribed under those rules. Therefore, even for the combined cadre of JTOs, which legally came into effect only on 8.2.96 when the statutorily prescribed recruitment rules for the combined cadre of the JTOs comprising erstwhile ASTTs and JTOs, came into force, the officers belonging to this combined cadre came to be governed by the recruitment rules for the next promotional cadre of TES Group B.

17. As we have already mentioned, to be considered eligible for promotion to the cadre of TES Group B under the relevant recruitment rules till the amended recruitment rules dated 22.7.96 came into force, the officers in the feeder cadre for TES Group B, i.e. JTOs had to pass a departmental qualifying examination. We, therefore, find hardly any merit in the contention of the applicants that since in their original capacity as ASTTs they did not require to pass any departmental qualifying examination for promotion to the TTS cadre, even after their merger in the combined cadre of the JTOs, passing of a departmental qualifying examination cannot be insisted upon for their further promotion to a different cadre called TES Group B. We are unable to agree with them on that score. Such an earlier dispensation cannot be automatically extended after their merger in the joint cadre of JTOs.

18. The other important reason why the position taken by the applicants while challenging the orders at A9 and A10 does not ^{appear to be} tenable is that for the same combined cadres of JTOs, to which the cadre the applicants as ASTTs got themselves merged, it will be patently against the principle of equal treatment before law and equality in respect of public service to allow one section among the combined cadre of JTOs to get promoted to the next higher cadre of TES Group B without

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insisting on a Departmental Qualifying Examination, while for the other section of erstwhile JTOs such promotion would be contingent only upon their acquiring the additional qualification, namely, a pass with certain marks at the Departmental Qualifying Examination. Therefore, the contention of the applicants to exempt them from passing that examination cannot be accepted as valid or legal. Besides, whether a pass in such an examination is really necessary for the cadre of TES Group B is entirely a matter for DOT to decide upon and prescribe. ²⁹ The scope of judicial scrutiny, as ²⁹ had been held by the Hon'ble Supreme Court in such matters, does not extend to examining the need or otherwise of such a stipulation in the Recruitment Rules.

19. The other important issue is whether DOT was competent to modify the effective date of merger of the two cadres of ASTTs and JTOs from the originally declared date under the order at A1 by issuing the impugned order at A11. We have no doubt that considering the developments that ²⁹ ensued after the issue of the order at A1, the order at A11 is appropriate and legally tenable. On a close examination, it becomes evident that the order at A1 actually laid down a scheme for merger of the two erstwhile services of ASTTs and JTOs and prescribed certain intermediary steps to be followed. For reasons which have been detailed by the official respondents, these intermediary steps could not be completed earlier and therefore these two erstwhile cadres could legally be merged under statutorily prescribed recruitment rules only when all the requisite formalities were completed. We may agree that in the process much time was indeed taken. However, that by itself cannot be held to have created a vested right in favour of the applicants, in the absence of statutorily prescribed recruitment rules merging the erstwhile

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cadres of ASTTs and JTOs, for them to claim certain automatic rights for promotion as JTOs to the next promotional cadre of TES Group B.

20. We have also noted the orders passed by this Bench in the O.As cited in the reply statement filed by the additional party respondent No.5, particularly those at Annexure R6(a) and R5(b). We find that none of the orders passed in these two O.As was challenged subsequently. They have thus become final. It is further evident that the dictum laid down in each of the two orders by this Bench in those two O.As No.925/95 and 1610/94 dated 26.7.95 and 1.12.95 respectively is that there can be no merger of the statutorily prescribed cadres only through an administrative instruction. Any merger abolishing the independent and distinct identity of a cadre of posts created under the statutorily prescribed recruitment rules can legally be effectuated only by promulgating another set of statutory rules having the effect of an amendment to the former recruitment rules. We find ourselves in complete agreement with that approach.

21. In the light of the detailed discussions made above, we are convinced that the applicants in this O.A. are not entitled to any of the reliefs prayed for by them. We, therefore, dismiss the O.A. as being devoid of merits. There shall be no order as to costs.

Dated, 1st May, 1998.


(SK GHOSAL)
ADMINISTRATIVE MEMBER


(AV HARDASAN)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A-1 : Order No.5-1/94-TE-II dated 5-4-94 of the Ministry of Communication, Telecommunications Department, New Delhi.
2. Annexure A-5 : Order No.STA/2-20/A1GL-JTO/97 dated 16-6-97 of the 4th respondent's office.
3. Annexure A- 9 : Order No.2-95/94-STG-II dated 26-9-96 of the Ministry of Communications, Department of Telecom, New Delhi.
4. Annexure A-10 : Order No.2-8/97 STG-II dated 20-8-97 of the Ministry of Communications, Department of Telecommunication, New Delhi.
5. Annexure A-11 : Order No.5-1/94-TE-II dated 13-1-98 of the Department of Telecom, Sanchar Bhavan, New Delhi.
6. Annexure R-5(b): Order dated 1-12-95 of this Tribunal in O.A 1610/94.
7. Annexure R-6(a): Telegraph Engineering Service (Group 'B') Recruitment Rules, 1981 published as per Notification dated 7-5-81.

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