

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 378/90  
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DATE OF DECISION 30-4-1991

Jeny Jose Applicant (s)

Mr P Kesavan Nair Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)  
Secretary, Department of  
Communications, New Delhi & another.

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. To be circulated to all Benches of the Tribunal? ☒

JUDGEMENT

Shri SP Mukerji, Vice Chairman

In this application, submitted on 16.5.90 and later amended on 21.12.90, the applicant who is a Science Graduate has prayed that she may be declared to be entitled to be considered for selection and appointment as Junior Telecom Officer (JTO) on the basis of the marks obtained by her in Part III of the B.Sc Degree examination and the second respondent i.e., the Chief General Manager, Telecommunications, Kerala Circle be directed to consider the applicant also alongwith others in preference to those who have lesser marks than <sup>those</sup> ~~that~~ of the applicant.

2 According to the applicant, the second respondent invited applications for the post of JTO in March, 1989 vide Annexure A1.

The Educational qualification<sup>2</sup> in accordance with the Statutory Recruitment Rules for 1974 was prescribed as follows:

" Degree in Engineering, Mechanical, Electrical, Telecommunication, Electronics or Radio Engineering from a recognised University or equivalent qualifications or B.Sc/ B.Sc(Hons.) (with physics and Mathematics and Main/Elective/Subsidiary/ Additional/ Optional subjects) with 60% marks in the aggregate obtained in the examination of a recognised University".

The applicant's contention is that the selection also should be based on the aforesaid basis and her marks only in Part-III subjects in the final degree examination should be taken into account. She has indicated that in Haryana Telecom Circle also the marks in Part-III of the degree examination are taken into account for selection as per Annexure A2. She has also referred to the DG P&T's letter dated 28.8.82 clarifying that 60% marks refers to Part-III of B.Sc course. The applicant has secured 95.2% marks in Part III of B.Sc examination held in April, 1987 (Annexure A4), but she was not called for interview or <sup>for</sup> marks verification even though candidates with lesser marks were called.

If selection is made on the basis of the total marks in all the 3 parts of the Degree examination, candidates with lesser marks ~~were~~ <sup>2</sup> than the applicants' in part-III, but higher marks in part I and II will get selected.

This, according to the applicant, would go against the graduates of Kerala University where ranks or divisions in the Degree examination is given on the basis of the marks scored in part III subjects alone. She has also

argued that the mode of selection shown in the advertisement at Annexure A1 is contrary to the instructions to the candidates at Annexure A8 which stipulates ' that the selection will be to the order of merit and marks obtained in the engineering degree or in the B.Sc/ B.Sc(Hons.) degree examinations.' She has also contended that the <sup>impugned</sup> mode of selection gives preferential treatment to the engineering graduates.

3 The respondents have in the counter affidavit stated that in accordance with the rules, selection is made strictly in the order of merit<sup>on</sup> on the basis of aggregate percentage of marks obtained in all the 3 parts of the Degree examination. The eligibility, however, is restricted to those Science Graduates who have got at least 60 % marks in Part-III subjects alone. They have also referred to the clarification given in the Director General, P&T's letter dated 16.2.74 at Exbt. R2(b) wherein it was clarified that the selection would be based on total marks obtained by the candidates in all the 3 parts. This has been further endorsed by the letter dated 28.8.82 at Exbt. R2(c). They have clarified that in the University of Kerala 300 marks are allotted to Part-I, 300 to part II and 1000 to Part-III.

4 In the additional counter affidavit, the respondents have stated that JTOs have some administrative duties also apart from their main duties of technical nature.

There is accretion of administrative duties on their further promotion. Accordingly, a fair knowledge in languages is necessary for them which is ensured by taking into account their aggregate marks in the Degree examination. Since pass in Part I and II is needed for getting Degree, there is no anomaly in taking the marks obtained in those parts also for selection. They have also clarified that there is no inconsistency between the mode of selection indicated in the advertisement and in the 'Instructions to the candidates'. They have stated that no preferential treatment is being given to the engineering graduates and if part-III marks in B.Sc marks ~~is~~ alone <sup>are</sup> taken for selection, no engineering graduates will get selected which will not be in the public interest.

5 In the rejoinder, the applicant has stated that 35% of the vacancies of JTO are filled up by promotion of departmental candidates who <sup>are</sup> ~~were~~ only matriculates with poor command over language. The engineering graduates ~~are also~~ have little competency in language. Therefore, the emphasis on Part I and II <sup>for</sup> ~~over~~ the Science ~~Degree~~ graduates cannot be justified. She has ~~therefore~~ referred to the mode of selection in Maharashtra where also selection is based on the marks obtained in special and optional subjects in B.Sc Course.

6 We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. An identical question whether Science Graduates should be selected on the basis of the marks obtained by them in Part-III of the Degree examination or in all the parts, came up before us in DA 1149/90. In our judgment dated 31.8.90 we went into the whole question in great detail. In that case the respondents indicated that in 1982 the recruitment of TJOs was made on the basis of aggregate percentage marks in all the parts of the Degree examination. In 1983, it was based the marks obtained in Part-III only. From 1984 to 1988 there was no recruitment. In 1989, it was decided after due consideration that the selection should be made on the basis of aggregate percentage of marks in all the 3 parts. It was clarified that in the University of Kerala, Degrees are awarded in all the 3 parts specifically mentioning the same in the Degree certificates. It was stated that the highest percentage of marks obtained by the engineering graduates in the Select List was 84% whereas, the Science Graduates had got 99% in part-III and 86.8% in the aggregate and thus if selection is made on the basis of marks obtained in Part-III, no engineering degree holder would be within the zone of selection. In our judgment in that case the following observations will be pertinent and will fully meet by the arguments propounded by the

learned counsel for the applicant in this case.

"6. So far as the case before us is concerned, we do not see much merit in unsettling the selections which have already been made. The applicants before us are ordinary Science graduates and this Tribunal has held in OA 304/89 that " the Recruitment Rules are silent regarding the mode in which the actual selection is to be made and 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." It was also held by the Tribunal that even with aggregate marks in all the three papers, an ordinary Science Degree holder is more at an advantage over an Engineering Degree holder. This assumption is supported by what has been stated by the respondents in this case from actual facts. The following para from the Counter Affidavit dated 10th July 1990 would be an eye opener:

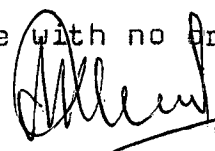
" In this connection it is mentioned that the highest percentage of marks obtained by an Engineering Degree holder in the provisional Select List is 84 whereas the highest percentage of marks in Part III (subjects) of the B.Sc candidate in the provisional Select List is 99, who has secured an aggregate of 86.8. Therefore, if the selection is made on the basis of percentage of marks in Part.III alone, no Engineering Degree holder will be within the zone of selection. Only B.Sc candidates with more than 90% marks in subjects alone are likely to be selected."

"7 The above in any case will show that even with all the three Parts taken together, an ordinary Science graduate may get more marks than the highest scorer amongst the Engineering graduates. In that context, to give a further ~~a~~ advantage to the ordinary Science graduate by taking the marks of Part III papers only into account, would be unfair to the Engineering graduates. Considering the importance of Engineering graduates in Telecom Department, it would not also be in the public interest to put them to a still less disadvantageous proposition vis-a-vis the ordinary Science graduates. Already, under the existing dispensation, only 44 Engineering graduates could find places within the first 214 positions in the merit list. If only Part III paper is taken into account for preparing the merit list, the Engineering graduates will further fade away numerically. The Recruitment Rules as they stand, as also the Advertisement and Instructions to the Candidates clearly distinguish between the eligibility and selection criteria. For ordinary Science graduates the eligibility

criterion is at least " 60% marks in the aggregate obtained in Part-III of the Degree examination of recognised University". For selection it is clearly laid down that the basis would be " the order of merit on the basis of the aggregate marks obtained in the Degree examination to the extent of vacancies." Thus, it will be a violation of the Recruitment Rules and the advertised criteria if at this stage the selection criterion is changed from aggregate marks to marks in Part III of the Degree examination for ordinary Science graduates.

8 So far as the administrative instructions dated 15.9.81 and 28.8.82 are concerned, we do not find anything in them which would persuade us to recognise marks in Part III paper to have been laid down as the criterion for selection. These instructions referred to 60% of the marks in Part III of the B.Sc course as relevant for eligibility and not for selection."

7 The fact that in Maharashtra or Haryana, a different mode of selection has been adopted is not a justification for reviewing the decision taken by us after detailed considerations. In these circumstances, we do not see any force in the application and dismiss the same with no order as to costs.

  
(AV Haridasan)  
Judicial Member

  
(SP Mukerji)  
Vice Chairman

30-4-1991