

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No.303 of 1996

Date of order 10-8-1999

1. Sharat Kumar, son of Late Rama Nand Lal Karn, resident of Mohalla Mirchaibari, PO Katihar, District Katihar, presently posted as Telephone Operator in the office of Telecom, District Engineer, Katihar.
2. Pranav Kumar Sah, son of Shri Govind Sah, resident of Mohalla P.T.Para, PO and District Katihar, presently posted as Telecom Office Assistant in office of Telecom District Engineer, Katihar.
3. Md. Shakilur Rahman, son of Shri F.Rahman, resident of Mohalla Rampara, PO and District Katihar, presently posted as Technician in the Telephone Exchange, Katihar.
4. Anil Kumar, son of Late H.C.P.Sinha, resident of 68 LIC Colony, Kankarbag, Patna, presently posted as Senior TBA in the office of Director, Telecom (North) Patna.
5. Vijoy Kumar, son of Shri Jagdish Prasad, resident of Shiva Niwas, Postal Partk, Patna-1, presently posted as Technician in the office of Director Telecom (North) Patna.

..... Applicants

-versus-

1. Union of India, through Assistant Director General (STC), Department of Telecom, 20, Ashoka Road, Sanchar Bhawan, New Delhi-1.
2. Assistant Director General (STC), Department of Telecom 20, Ashoka Road, Sanchar Bhawan, New Delhi-1.
3. Director (ST-II), Department of Telecom (NCG Section), 20 Ashoka Road, Sanchar Bhawan, New Delhi-1.

4. Chief General Manager Telecom, Bihar Circle, Patna-1.
5. Director, Telecom (North), Patna-1.
6. Assistant General Manager (Administration),
Telecom, Bihar Circle, Patna-1.
7. Telecom District Engineer, Katihar.

.. Respondents

Counsel for the applicants .. Shri Gautam Bose

Counsel for the respondents ... Shri V.K.M.Sinha

CORAM : Hon'ble Shri L.R.K.Prasad, Member (A)

Hon'ble Shri Lakshman Jha Member (J)

ORDER

Hon'ble Shri L.R.K.Prasad, Member (A) :-

This application has been filed seeking following reliefs:-

- (i) Order dated 25.7.1995 passed by the Director (ST-II) (Annexure-A/5) be set aside.
- (ii) Issuance of a direction on the respondents to declare the result of 15% of departmental competitive quota of Bihar Circle of JTO- Departmental Competitive Examination, 1992 in accordance with Annexure-A/4.
- (iii) The respondents be directed to absorb the applicant as JTO with due seniority against the vacancy of direct recruitment quota of 1992, 1993 and 1994.
- (iv) The respondents be directed not to fill up the vacancy of direct recruitment quota from the outside.

(v) Cost of incidental to the proceeding be awarded.

2. The applicants (5 in number) are regular employees in the Department of Telecom, Govt. of India. While applicants 1 to 3 are working under ~~under~~ Telecom District Engineer, Katihar as Telephone Operator, applicant nos. 4 and 5 under Director, Telecom (North), Patna as Senior Telecom Operating Assistant and Technician respectively. In March, 1992, they appeared for JTO Departmental Competitive Examination against 15% and 10% departmental competitive quota in Bihar Circle. The applicants ~~so~~ appeared against 15% quota. Even though the applicants qualified against 15% quota, they could not be absorbed for want of vacancy. It is stated by the applicants that in the year 1994 as one time measure, it was decided that available vacancies against direct recruitment quota may be diverted to be filled up under departmental competitive quota. Accordingly, a direction was issued vide letter No.5-5/93-NCG dated 12.1.1994 (Annexure-A/1). In response to the said letter, the details of the candidates, who passed in all the subjects of JTO Competitive Examination held on 14.3.1992 and 15.3.1992 but could not be selected for want of vacancy, were furnished to the concerned authority vide letter dated 28.8.1994 of Chief General Manager (CJM) Telecom, Patna Circle, Patna (Annexure-A/2). The list furnished with the aforesaid letter indicated that 8 candidates against 10% quota and 41 candidates against 15% quota have been recommended and the names of the applicants appeared in the list of 15% competitive quota at Serial Nos. 21, 24, 20, 40 and 34 respectively.

3. The letter dated 24th August, 1994 (Annexure-A/8) on the subject of filling up JTO post states that it has

been decided that as a one time measure, all the vavancy against direct recruitment quota, as on date, may be diverted to departmental competitive quota in order to absorb these PIs/TAs/AEAs/WOs who have already qualified in the competitive examination but could not be selected due to shortage of vacancy. The letter further states that the selection should be made according to marks obtained and the candidates be absorbed according to the seniority maintained as per the orders on the subject. It is stated by the applicants that all 8 candidates who had appeared in 1992 examination against 10% competitive quota have already been absorbed as JTO. Our attention has been drawn to letter dated 30th June, 1995 (Annexure-A/4) and the letter dated 25th July, 1995 (Annexure-A/5) of the Department of Telecommunications on the subject. The letter dated 30.6.1995 states that it has been decided that persons (who qualified against 15% quota (all Gr.'C' cadres) who could not be absorbed as JTO for want of vacancy should be absorbed against direct recruitment quota after diverting direct recruitment quota vacancies to departmental competitive qualifying quota. It further states that the qualified candidates are to be absorbed according to seniority maintained as per the orders on the subject. The letter dated 25th July, 1995 is in continuation of the letter dated 30th June, 1995. The main content is reproduced below:-

"The orders issued vide this office letter of even no. dated 30.6.95 allowing persons who qualified against 15% quota (all Gr.'C' Cadres) to be absorbed against direct recruitment quota after diverting direct recruitment quota vacancies to the departmental competitive/qualifying quota may be treated as cancelled and no action need be taken as per this order."

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The letter dated 25th July, 1994 cancelling the letter dated 30.6.1995 came as a shock to the applicants. They further felt aggrieved over the action of the respondents in issuing an advertisement (Annexure-A/6) in "Hindustan" on 17.10.1995 inviting application for recruitment to the post of JTO from outside against all these vacancies of 1993 and 1994. According to the applicants, this was an unjustified action on the part of the respondents on the ground that all the vacancy against outside quota upto August, 1994 had already been diverted for proper utilisation of surplus staff as mentioned in the letters dated 24.8.1995 (Annexure-A/3) and 30.6.1994 (Annexure-A/4).

4. We have heard the learned counsel for the parties and perused the materials on record, written statement and rejoinder to the written statement.

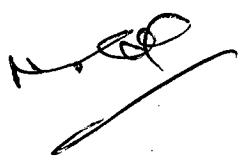
5. The respondents have submitted that the applicants had appeared against the 15% competitive quota of examination meant for other than PAS, PI, WO & EA but they did not compete. It is an admitted fact that vide letter dated 12.1.1994 (Annexure-A/1) the concerned authorities had been advised to furnish the details of such departmental candidates year-wise for the last two years who have passed the competitive examination but could not be selected as the posts were very few. Through subsequent letter No.5-5/93-NCG dated 14.7.1994 of the Directorate ^{it was} clarified that the order dated 12.1.1994 was only for 20% competitive quota meant for PI, RAS, AEA, WO. With reference to para 4.6 of the O.A. the respondents have clarified that it was merely the list of qualified candidates of 15 and 20% competitive quotas

sent to Directorate for information and there was no recommendation of the Chief G.M.Telemc, Patna.

The letter dated 24.8.1994 (Annexure-A/3) of DOT, New Delhi clearly states that a decision has been taken to the effect that as one time measure of available vacancies against direct recruitment quota, as on date, may be diverted to departmental competitive quota in order to absorb PIs/TAs/AEAs/WOs who have already qualified the competitive examination but could not be selected due to shortage of vacancy. The respondents have stated that the applicants do not belong to aforesaid cadre as such, the question of their absorption in the cadre of JTO does not arise.

6. It is also an admitted position that the instructions of DOT, New Delhi, as contained in their letter dated 30.6.1995 (Annexure-A/4) was subsequently cancelled by letter dated 25.7.1995 as at Annexure-A/5. The respondents have also drawn our attention to the order (Annexure-R/1) of CAT, Bangalore Bench in O.A.Nos. 960/95, 925 to 929/95, 997/95, 1061/95 and 1062/95 passed on 24th April, 1996. It is stated that there is a similarity between the case of the applicants and the OAs referred to above in the order of the CAT, Bangalore Bench(supra). Those cases were dismissed by CAT, Bangalore Bench.

7. While reiterating the points already made in the O.A., the applicants have stated through rejoinder that they had qualified in the JTO departmental competitive examination held in 1992. However, they could not be promoted due to shortage of vacancy. According to them,



the basic requirement of Annexure-A/1 and A/4 is that such departmental candidates, who have passed competitive examination or qualified in the same examination, are entitled to be absorbed against the diverted vacancy of direct quota. They have reiterated that in response to letter dated 12.1.1994 (Annexure-A/1), list of qualified candidates have been sent to DOT by CJM, Bihar Circle, vide his letter dated 28.8.1994. According to them, the facts and circumstances of their case are different from the case decided by the CAT, Bangalore Bench (Annexure-R-1). In support of their claim for absorption, the applicants have relied on the following judicial verdict :-

- (i) Judgment of CAT, Principal Bench, Delhi dated 6.2.1987 in the case of Ishwar Singh Khatri and others v. Union of India and others (1987 Vol.4 ATC page 932- Annexure-A/9).
- (ii) Order of Hon'ble Supreme Court passed on 4th August, 1989 in Civil Appeal No.1900 of 1987 (1992 Vo.21 ATC page 851 -Annexure-A/10).
- (iii) Observation of Hon'ble Supreme Court in the matter of S.Govindaraju vs.K.S.R.T.C. reported in AIR 1986 (2) SC page 362.
Reliance has also been place on MHA(DOP&AR) Memo No.22011/2/78, Est.(G) Govt. of India dated 8.2.1982.
It may be stated that in all the above cases, the orders were passed in the context of a given situation. Therefore, the relevance of above orders with reference to the instant O.A. will have to be considered in the light of the facts and circumstances of the instant O.A. as well as the applicability of relevant recruitment rule.

8. According to the respondents, the circular of Ministry of Home Affairs, as referred to above, is not applicable in the case of the applicants because the applicants were neither selected in the said examination nor the candidates were declared successful. The names of the candidates only find place in the list of ~~qualified~~ candidates. It is further stated that in a competitive examination merely qualifying marks does not ensure a berth in the select list. The candidates are selected as per the merit and availability of the vacancies. There is substance in this argument advanced by the respondents.

9. According to the relevant recruitment rules, the posts of JTOs have to be filled up by direct recruitment and also through departmental candidates. 65% of the vacancy is meant for direct recruits and 35% for departmental candidates. The quota of 35% of departmental candidates have following components :-

- (a) 10% by means of qualifying examination restricted to PIs, TAs, WOs and AEAs.
- (b) 10% by means of a competitive examination exclusively for PIAs, TAs, WOs and AEAs.
- (c) 15% by means of a competitive examination restricted to Technicians, Operators, Office Assistants.

The competitive examination referred to in (b) and (c) is the same examination with same syllabus and same minimum standard.

10. In March, 1992, a departmental competitive examination against 15% and 10% departmental competitive quota in Bihar Circle was conducted. The applicants appeared against 15% competitive quota of examination meant for other

than PI, WO and AEA but they did not find their place in the merit/select list. The applicants had come up to the minimum standard. However, in view of superior performance of others in their category and keeping in view available vacancies in their quota, they were not selected for the post.

11. Vide letter dated 12.1.1994 (Annexure-A/1) the Regional Heads were requested by DOT to furnish the details of such departmental candidates year-wise for last two years who have passed the competitive examination but could not be selected due to shortage of vacancy. It has also been stated in the said letter that there has been demand from the Federations that even after filling up the posts from amongst the qualified officials, as a one time measure for diverting vacancies from outside quota, there remains a large number of JTOs posts vacant. The Chief General Manager, Telecom, Bihar Circle, vide his letter dated 30.8.1994 (Annexure-A/2) furnished the details of candidates to DOT who passed in all the subjects of JTOs competitive examination held in March, 1992 but they could not be selected for want of vacancies. Annexure-I attached with the said letter is the list of 8 candidates under 20% quota meant for PI, RGA, WO and AEA. Annexure-II attached with the said letter is a list of 41 candidates under 15% quota meant for other than PI, WO, AEA and RAS. In both the aforesaid Annexures, marks obtained by the candidates have been indicated. It may be stated that letter dated 12th January, 1994 (Annexure-A/1) only indicates the demand of the Federations for diverting vacancies from outside quota. Even though the details of departmental candidates have been called for but there is no assurance given through this letter that persons

like the applicants will be selected as JTA. The letter dated 30.8.1994 (Annexure-A/2) is not a recommendatory letter but through this letter only certain information with reference to DOT's letter dated 12.1.1994 has been furnished. However, it is noted from DOT's letter dated 24th August, 1994 (Annexure-A/3) that a decision was taken for absorbing RSA/PIs/WOs/AEAs in the vacancies against direct recruitment quota as one time measure. A decision was also taken that as one time measure, all the vacancies against direct recruitment quota, as on date, may be diverted to departmental competitive quota in order to absorb these PIs/TAs/AEAs/WOs who have already qualified in the competitive examination but could not be selected due to shortage of vacancy. The selection will be made according to marks obtained and candidate to be absorbed according to seniority maintained as per the orders on the subject. The letter dated 30-6-1995 (Annexure-A/4) states that it has further been decided that persons who qualified against 15% quota but could not be absorbed as JTO due to want of vacancy may be absorbed against the direct recruitment quota after diverting direct recruitment quota available to departmental competitive/qualifying quota. However, the said letter of 30.6.1995 was cancelled by another letter dated 25th July, 1995, as at Annexure-A/5. The applicants had submitted necessary representations to the concerned authority but they did not get any positive response. As they were aggrieved by the action of the respondents, they filed this O.A. before this Tribunal. It may also be noted that the applicants filed this O.A. in 1996 only after the respondents vide their letter dated 25th July, 1995, decided to cancel their letter dated 30.6.1995 allowing

persons who qualified against 15% quota to be absorbed against direct recruitment quota after diverting direct recruitment quota available to the departmental competitive quota.

12. The applicants have heavily relied on the O.M.No.22011/2/79-Estt.(D) dated 8.2.1982 issued by Department of Personnel (MHA), Govt. of India, regarding validity period of list of selected candidates prepared on the basis of direct recruitment Departmental Competitive Examination. They have also cited some judicial verdict regarding aforesaid circular as has already been stated. This circular provides that normally in case of direct recruitment, a list of selected candidates is prepared to the extent of number of vacancies (other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment). Similarly, in the case of Departmental Competitive Examinations, the list of selected candidates has to be based on the number of vacancies on the date of declaration of results, as the examination is competitive and selection is based on merit. It further provides as follows:-

"3. The matter has been carefully considered, normally recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future: in case names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected



candidates awaiting appointment. Thus, there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination.

44. Once a person is declared successful according to merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments first, before starting appointments from a fresh list from a subsequent recruitment of examination."

In the case of Ishwar Singh Khatri & others vs. Union of India and others (reported in 1987(4) ATC 932) CAT, Principal Bench, New Delhi on 6.2.1987 held that right to appointment after inclusion of the names in the panels of selected candidates flows out of instructions issued by MHA's O.M. dated 8.2.1982. The panel, therefore, continues to subsist and would be valid. In the Union of India and others vs. Ishwar Singh Khatri and others (1992 Vo.21 ATC 851) the Hon'ble Apex Court held that selected candidates have right to appointment only against vacancies notified or available till the panel or select list is prepared.

13. From the above analysis of the case, one thing becomes clear that the circular of MHA(DOPT) ^(G.O.) dated 8.2.1982 (supra) has specific application. It relates to ⁶ selected

candidates prepared on the basis of direct recruitment/ departmental competitive examination. In the instant case, the applicants, even though qualified under the departmental competitive examination held in 1992, were not included in the merit/select list. As the vacancies to the post in question were limited, selected candidates were accommodated against available vacancies and the case of the applicants could not be considered due to shortage of vacancy. The respondents have made it clear that the applicants were not selected in the examination held in 1992. On the other hand, all the selected candidates were absorbed. As the applicants were not selected, they did not find place in the merit list. Merely obtaining qualifying marks does not ensure a berth in the select list. The candidates are selected as per merit and availability of vacancy.

14. Due to demand from Federation regarding diversion of direct recruitment quota to departmental competitive examination quota, the respondents had decided in their letter No.5-5/93-NCG dated 12.1.94 for such diversion in order to absorb available qualified persons under the departmental examination quota. However, the same was cancelled vide letter dated 25th July, 1995. No assurance was given by the respondents that they will be absorbed. Even though there is a provision in the recruitment rule for JTO that where the Central Govt. is of the opinion that it is necessary and expedient to do so, it may by order and for reason to be recorded in writing relax any of the provisions of these rules with respect to any classe or category of persons. The relaxation power has been given to the

Central Government under the relevant recruitment rules but it is for them to consider the said clause keeping in view the necessity for such relaxation and then take appropriate decision in the matter in public interest. It would not be appropriate for this Tribunal to interfere in such matter. In any view of the matter, the applicants do not belong to select/merit list category which was prepared after the examination in question held in March, 1992. As such, they cannot claim their absorption as a matter of right. It is for the respondents to take appropriate ~~decision regarding relaxation of recruitment rules.~~ Such exercise of power by the respondents will have to be on justified administrative grounds.

15. We have considered the entire matter keeping in view the facts and circumstances of the case, submissions made by the learned counsel for the parties and materials on record. In view of the analysis made above, we are of the view that this O.A. is devoid of merit and it does not stand. In the aforesaid circumstances, this O.A. is ~~dismissed~~ with no order as to the costs. The interim order passed by this Tribunal on 3.7.1996 is also vacated.

L.Jha
(0.8.99)
(Lakshman Jha)
Member (J)

L.R.K.Prasad
(L.R.K.Prasad) 10.8.99
Member (A)