IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT SITTING AT AURANGABAD
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NEW BOMBAY BENCH

~~XXXXXXX~~ 198
T.A. No. 16/87 & 396/87

DATE OF DECISION 18-7-1988

All India Telegraphs Engg.Employees ~~Union Linse Staff and Class IV~~ Petitioners in T.A.16/87

Sambhaji Jaisingh Shinde & two Ors. Petitioners in T.A.396/87

Shri Pradeep Shahane Advocate for the Petitioner(s)

Versus

Union of India & Divisional Engineer Telegraphs, Nanded. Respondent

Shri Naresh Patil Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman

The Hon'ble Mr. P.Srinivasan, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? — yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT SITTING AT AURANGABAD

Tr.16/87 & Tr.396/87

1. All India Telegraphs
   Engineering Employees Union
   Line Staff and Class IV,
   Nanded Division,
   C/o.Trunk Exchange,
   Nanded through its
   Divisional Secretary,
   Shri Sudhakar G.Kulkarni.

2. Suresh Trimbak Vyavhare,
   At & Post: Jawala Bazar,
   Dist. Parbhani.

3. Laxman Wamanrao Chavan,
   AT & Post:Nandapur,
   Dist. Parbhani.

4. Uttam Laxman Choudhari,
   C/o.Carrier Station,
   Nanded.

5. Mukhatarkhan Abdulkhan,
   At & Post: Kundalwadi,
   Dist: Nanded.

6. Pandurang Iraba Waghmare,
   At & Post:Kundalwadi,
   Dist. Nanded.

7. Bhimrao Rajaram Ingale,
   Trunk Exchange,Hingoli,
   Dist.Parbhani.

8. Balu Bajirao Ingale,
   At & Post:Trunk Exchange,
   Hingoli,Dist.Parbhani.

9. Narayan Namdeo,
   At & Post:Kundalwadi,
   Dist.Nanded.

10. Pandurang Bajirao Kagane,
    At & Post: Mangalwara,
    Hingoli,Dist.Parbhani.

11. Ulhas Gangaram Patil,
    AT & Post: Jaibhimnagar,
    Kinwat,Dist.Nanded.

12. P.D.Kambale,
    C/o.Trunk Exchange,
    Dist.Parbhani.

13. R.N.Harkari,
    C/o.Automatic Telephone Exchange,
    Nanded.

14. U.M.Kadam,
    C/o.Automatic Telephone Exchange,
    Nanded.

15. G.K.Pande,
    Trunk Exchange,
    Nanded.

.. Applicants in
Tr.Appln.16/87

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1. Sambhaji Jaisingh Shinde,
Casual Labour,
Trunk Exchange,
Nanded.

2. J.S.Hatagale,
Casual Labour,
R/o.Nandgaon,
Post:Bharaswada,
Tq.: & Dist.Parbhani.

3. S.R.Patil,
Casual Labour,
C/o.Shri U.P.Kate,
Telephone Exchange,
Parbhani. .. Applicants in Tr.Appln.396/87

vs.

1. Divisional Engineer,
Telegraphs,
Nanded Division,
NANDED.

2. Union of India. .. Respondents in both the above cases.

Coram:Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A)Shri P.Srinivasan.

Appearances:

1. Shri Pradeep Shahane,
Advocate
for the applicants.

2. Shri Naresh Patil,
Advocate for the
Respondents.

ORAL JUDGMENT Date:18-7-1988
(Per B.C.Gadgil,Vice-Chairman)

Writ Petition No.45/84 and Writ Petition No.44/84 of the file of the High Court of Bombay Aurangabad Bench are transferred to this Tribunal for decision and are numbered as Tr.Application No.16/87 and Tr.Application No.396/87 respectively.

2. These two matters can be conveniently decided by common judgment as they involve similar points.

3. The dispute is about the promotion to the post of Lineman in the Nanded Telecom Division,Nanded.

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Applicants Nos.2 to 15 in Tr.Appln.No.16/87 and applicants Nos.1 to 3 in the other Tr.Appln. made applications for promotion to this post. The promotion is dependant upon passing an examination. In addition there were a few eligibility clauses which the candidate had to fulfil. The case of these applicants is that they fulfilled all the eligibility requirements and were therefore permitted to appear for the examination. They passed the examination. Thereafter they were given four months training after they executed ~~the~~ a fidelity bond for Rs.400/-. One more examination was required to be passed after training. They passed that examination also. The contention of the applicants is that thereafter they were entitled to be appointed as Lineman. However, orders were passed on 7-11-1983,17-11-1983 and 15-12-1983 whereby the earlier selection of these applicants was treated as cancelled. It is this action of the department that is being challenged in this two matters.

4. The selection was cancelled on three grounds. It was alleged that since candidates for appointment were required to be sponsored by the Employment Exchange,applicants Nos.2 to 12 in Tr.Appln.16/87 were not eligible for appointment because they were not so sponsored. As far as applicants Nos.13,14 and 15 in Tr.Appln.16/87 and Applicant Nos.1 & 2 in Tr.Appln.396/87 are concerned the department contends that they had not completed 365 days of work in construction parties which was another precondition for appointment. Then remains the case of applicant No.3 in Tr.Appln. 396/87. It was alleged that the said applicant was not eligible as he did not fulfil another eligibility condition that he should have worked for 180days in the Nanded Division. According to the applicants,these objections of the respondents are untenable and they should have been given appointments after having onee been selected for the post.

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5. The respondent department has resisted the application by filing their written replies in both the matters. It is not necessary to recount the contents of these replies inasmuch as the contentions raised therein have already been set out above.

6. As far as applicants Nos.2 to 12 in Tr. Appln.16/87 are concerned, it is true that ordinarily a candidate is required to be sponsored by the Employment Exchange. However, there were some difficulties experienced by the Telecom Department in this regard, as much time was wasted in getting the required number of candidates sponsored where the place of employment was far from the office of the Employment Exchange. The matter was considered in depth and the Government issued instructions under D.O.letter No.EEI-21(21):72 dtd.11th September,1972, and No.269/21/68/STB.I(Pt)dtd.29-9-1972. It is not necessary to reproduce the entire contents of these two communications. Suffice it to say that Govt.decided that sponsorship by the Employment Exchange would be insisted upon only when appointment is made at a place within a radius of 16 kms. from a place in which an office of the Employment Exchange is located. Such sponsorship would not be necessary if the place of work is beyond a radius of 16kms. from the office of the Employment Exchange:in such cases,the department could make recruitment of casual mazdoors directly from among persons registered at Employment Exchanges and thereafter sent a list of persons so recruited to the concerned Employment Exchange. At the time of argument learned advocate for the respondents could not displace the contention of applicants Nos.2 to 12 that they were recruited for work at a place beyond a radius of 16 kms. from the office of the Employment Exchange. Consequently there was no question of the B1 respondents ~~candidate~~ insisting they should have been sponsored by the Employment Exchange. It was of course necessary that

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these applicants should have registered themselves with the Employment Exchange and it is not challenged that they had done so. As stated earlier, the department was required to intimate the Employment Exchange after selecting these applicants. It was submitted for the respondents that this really meant that the Employment Exchange should have sponsored their names. We are not able to accept this contention inasmuch as sponsoring a name would precede the process of selection or appointment while intimation contemplated by the above mentioned Govt.communication is an action which follows the appointment. It is thus clear that cancellation of the selection of applicant Nos.2 to 12 in Tr.Appln. was erroneous.

7. Applicants Nos.13,14 and 15 in Tr.Appln.16/87 and Applicant Nos.1 & 2 in Tr.Appln.396/87 were working in the maintenance party at the Telephone Exchange before their selection. Their contention is that since they had worked in the maintenance party for more than 365 days,they were eligible for appointment. As against this Mr.Patil,for the respondents submitted that to become eligible for appointment, a person must have worked either in a construction party or on external maintenance of lines and cables and not inside an exchange. He drew a distinction for this ~~prupose~~ purpose between maintenance internal i.e. within a Telephone Exchange and maintenance external i.e. on overhead line,cables etc. outside a telephone exchange BL and maintenance internal, i.e within a telephone exchange. On the other Mr.Sahane for the applicants argued that such a distinction is not permissible and that 365 days work on maintenance in a Telephone Exchange or outside would both do. This question is not free from doubt. However, we do not propose to go into it here as the matter can be disposed of without doing so as will be explained later in this judgment.

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8. We have already observed, applicant No.3 was held to be not eligible because he had not worked for 180days in Nanded Division. It appears from the rules of recruitment that such a condition had indeed been imposed. Mr.Patil therefore urged that the cancellation of his selection be upheld. However, this contention will also have to be considered in the background of the following circumstances.

9. It is material to note that all the applicants made applications in the prescribed form seeking selection to the post of Lineman. The selection process included a written test as also an aptitude test. All the applicants appeared for these tests and passed. The candidates who pass these tests were to undergo four months' training. It is not in dispute that all the applicants also underwent such training and that for this purpose each of them executed a fidelity bond for Rs.400/-. The matter does not rest here. One more examination had to be passed after training and all the applicants passed this examination also. The question is as to whether in these circumstances, it would be no open for the department to retrace all these steps and cancel the selection of the applicants after they had successfully gone through all the preliminary stages. It is material to note that it is not the case of the respondents that the applicants had made false or incorrect ~~statements~~ representations in their applications which had led the department to accept their applications. The contention put forward by learned Counsel for the respondents that they had committed a mistake in entertaining the applications of the applicants which they could rectify at any time thereafter cannot be accepted in these circumstances, particularly when the applicants were allowed to appear for the concerned test/ examination and to undergo a four month training followed by another examination: as already stated, respondents also obtained Fidelity Bonds from each of the applicants.

The only inference possible ~~with~~ in these circumstances is that the department took a conscious decision to allow the applicants to take part in the selection process in relaxation of the rules - such power of relaxation being available in the rules themselves. There is much substance in the contention of Mr.Sahane that it would be unjust and inequitable for the department to cancel the selections. It was urged that the department is precluded from retracing the steps that they had already taken. In view of the peculiar facts of this case,therefore, we think that it would be in the fitness of things to direct the respondents to withdraw the cancellation of the selection of the applicants and to pass appropriate orders in furtherance of their earlier selection.

10. The result is that both the application succeed. The cancellation of selection ordered in the letters dtd. 7-11-1983,17-11-1983 and 15-12-1983 is set aside and the respondents are directed to proceed further on the basis of the selection of the applicants by treating the said selection as legal. This order should be complied with expeditiously, say, within a period of three months from today.

11. Parties to bear their own costs.

(B.C.GADGIL)
Vice Chairman.

(P.SRINIVASAN)
Member(A)