

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 715 /1996

Date of Decision: 22-11-96

G.N. Beturkar

Petitioner/s

Shri A.G. Teraskar

Advocate for the  
Petitioner/s

V/s.

The Chief General Manager, MTNL  
& 2 Ors.

Respondent/s

Shri V.S. Masurkar

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

abp

M.R.Kolhatkar  
(M. R. KOLHATKAR)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FBR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO : 713/96.

DATED THIS 22<sup>nd</sup> DAY OF NOVEMBER, 1996.

CORAM : Hon'ble Shri B.S. Hegde, Member (J).

Hon'ble Shri M.R. Kolhatkar, Member (A).

G.N. Beturkar,  
Technical Operating Assistant(G)Gr-I,  
St.No.24753,  
Office of DEE-3/DGM(Engg), M.T.N.L.,  
Telephone House,  
Mumbai - 400 028.

... Applicant.

By Advocate Shri A.G.Toraskar.

v/s.

1. The Chief General Manager,  
M.T.N.L., Telephone House,  
Prabhadevi, Mumbai - 400 025.

2. The General Manager(Addm),  
M.T.N.L., Telephone House,  
14th Floor, Prabhadevi,  
Mumbai - 400 028.

3. The Assistant General Manager(A-IV),  
M.T.N.L. Telephone House,  
Prabhadevi, Mumbai - 400 028.

... Respondents.

By Advocate Shri V.S. Masurkar.

I O R D E R

[ Per Shri M.R. Kolhatkar, Member(A) ]

1. This OA came up for admission on 22/7/96 and pending admission the Tribunal passed the following order:-

" Heard Mr. A.G.Toraskar, Counsel for the applicant. He has drawn our attention to the circular issued by the respondents vide dated 5/12/95 calling for options to enter into the restructured cadre of TTA from Grade 'C' and TSO/Technicians cadre and the last date for receipt of application was 15/1/96. Shri Toraskar states that the applicant was on leave during that period and he sent the application on 29/1/96, which is clear from the respondents' letter dated 5/7/96 and it is stated that the applicant was unaware of the circular issued by the respondents. Shri Toraskar further states that the examination is due to be held on 28/7/96 and accordingly he prays for interim

relief in terms of para 8(b) of the O.A.

In the circumstances, the prayer 8(b) is allowed for a period of 14 days. The respondents are directed to allow the applicant to appear for the Departmental Qualifying screening test which is to be held on 28/7/96 provisionally. The results of the said examination as far as the applicant is concerned should not be declared till the next date of hearing. Issue notice to respondents.

List the case on 2/8/96."

2. Since then, Interim Order was continued from time to time. Respondents have filed the written statement on 9/10/96. We heard both the parties.

3. The Basic contention of the applicant is that he is working in the office of DEE-3/DGM(Engg), for the last 12 years as Telecom Operating Assistant, that by a circular dated 5/12/95, issued by the respondents, respondent No.3 had called for options to enter into the restructured cadre of TTA from those who could not opt earlier and that the last date for the receipt of the application in the office was 15/1/96, that the applicant was on medical leave and he was not aware of moreover the said circular, the dealing assistant who deals with staff matters was on leave from 27/12/95 to 28/1/96, that the applicant and dealing assistant both joined office on 29/1/96 and the applicant submitted the option on 29/1/96. This form was forwarded by Accounts Officer by letter dated 30/1/96 in which the reason was given that the option form could not be given before due date since the above official was on leave when the options were called for. There was no formal rejection but the applicant came to know that his name is not included in the list of candidates who are appearing in the qualifying screening test and the applicant made a representation on 8/7/96 but there was no reply and hence the applicant approached the Tribunal which passed the Interim Order referred to above. The applicant has also enclosed with his OA, the letter dated

5/7/96 from the Accounts Officer in which apart from stating that the dealing assistant was on leave and the applicant was on leave, it is further stated that due to shortage of staff, the concerned letter could not be circulated to the concerned officials. The ground for seeking relief of directing the respondents to allow the applicant to appear for the qualifying test on 28/7/96 was that the applicant has a good record/and if he is not allowed to appear for/screening test, he may lose promotional avenues and many juniors to the applicant who appeared and passed in the test would steal a march over him. The reason for late filing of the option is as mentioned earlier namely he came to know about the circular late because he was on leave and also that the circular could not be circulated by the concerned section because of shortage of staff.

4. Respondents have opposed the OA. According to them the circular dated 5/12/95 was not the first circular calling for option but it was issued in the context of the fact mentioned in the circular itself that the first option was called on 12/4/94 and the last date for filing option was extended twice and was fixed at 30/11/94. But in view of several representations the last date to call options from those who could not opt earlier was fixed at 15/1/96 and that it was clearly mentioned in the last para of the circular dated 5/12/95 that no correspondence whatsoever will be made in cases of delayed applications.

5. It is therefore clear that the applicant had several chances earlier to give option but he did not/exercise the same. The mere fact that <sup>when the fresh circular was issued</sup> the applicant was away on leave or that the dealing assistant in a particular section dealing with staff matters was on leave and the applicant could exercise the option and send the option only on the return of

applicant and dealing assistant from leave cannot be a justification for permitting the applicant to file option in a belated manner. In such cases, when a circular has been issued in the normal course, it is presumed that the same would be noted by all the concerned employees in the normal course, that all employees are presumed to have noticed thereof and they were expected to act accordingly and any individual difficulties of the employees such as in the present case which really amounts to requirement of giving individual notice to each and every concerned employee cannot be allowed to stand in the way of the circular having full effect. We are therefore not impressed by the argument of the Applicant.

6. We also note that whereas while forwarding the application on 30/1/96, the only ground given by the Accounts Officer was that the above official was on leave, in the subsequent letter dated 5/7/96, at page-14, reference is made to shortage of staff due to which the circular could not be circulated to the concerned official. This stand can only be considered as an afterthought.

7. In view of the above discussion, we are of the view that the applicant is not entitled to the relief sought for. The respondents rightly decided not to accept his belated application. OA has no merit and is therefore dismissed. OA is admitted and disposed of at the admission stage in terms of the above orders. Interim Relief stands vacated and results of test availed of by applicant are to be treated as honest. No orders as to costs.

M. R. Kolhatkar  
(M. R. KOLHATKAR)  
MEMBER (A)

abp.

B. S. Hegde  
(B. S. HEGDE)  
MEMBER (J)