CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 196/96 & 339/96

DATE OF DECISION:27/7/2000

Shri Ashok Annarao Patil
& Shri Venkatesan Rajendran _____ Applicant.

Shri S.P.Kulkarni
---------- Advocate for Applicant.

Versus

Union of India & 4 Ors.
---------- Respondents.

Shri S.S.Karkera for
Shri P.M.Pradhan
---------- Advocate for Respondents.

CORAM:

Hon'ble Shri B.S.Jai Parameshwar, Member(J)
Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not? | No
2. Whether it needs to be circulated to other Benches of the Tribunal? |
3. Library.

(B.S.JAI PARMESHWAR)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:196/96& 339/96
DATED THE 27TH_ DAY OF JULY,2000

CORAM:HON.SHRI B.S.JAI PARMESHWAR, MEMBER(J)
HON.SHRI GOVINDAN.S.TAMPI, MEMBER(A)

O.A.No.196/96

Shri Ashok Annarao Patil,
Working as J.T.O. (SW-MTNL-I),
O/O.Director A/T T & D Circle,
Telephone House, 7th Floor,
V.S.Road, Mumbai - 400 028. ... Applicant

By Advocate Shri S.P.Kulkarni

V/s.

Union of India
Through:
1. Chairman,
Telecommunication, Commission,
Department of Telecom,
Ministry of Communication,
G.O.I. Sanchar Bhavan, 20,
Ashoka Road, New Delhi-110 001.

2. Member(Services),
Telecom Commission,
Department of Telecom,
Ministry of Communication,
Sanchar Bhavan 20, Ashoka Road,
New Delhi-110 001.

3. The Director (Acceptance & Testing),
Telecom & Dev. Circle (T & D),
Telephone House, 7th Floor,
V.S.Road, Dadar(West),
Bombay - 400 028.

4. Chief General Manager(T & D Circle),
Sanchar Vikas Bhavan, Residency Road,
Jabalpur-482 001.

5. Director (D.E. & V.P.),
D.E.Section, Department of Telecom,
Dak Bhavan, Parliament Street,
New Delhi-110 001. ... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan.

...2.

O.A.No.339/96

Shri Venkatesan Rajendran,
Working as Junior Telecom Officer,
Staff No.41044, DMX - 430/437,
Prabhadevi Telephone Building,
Veer Sawarkar Marg,
Mumbai-400 028. ... Applicant

By Advocate Shri S.P.Kulkarni

V/s.

Union of India
Through:
1. Chairman,
Telecommunication Commission.
Department of Telecom,
Ministry of Communication,
G.O.I. Sanchar Bhavan,
20-Ashoka Road,
New Delhi - 110 001.

2. Adviser(HRD)
Telecom Commission,
Department of Telecom,
Ministry of Communication,
Sanchar Bhavan, 20,Ashoka Road,
New Delhi-110 001.

3. Dy General Manager(North)<
Telecommunication,
Prabhadevi Telecom Building,
6th Floor, V.S.Road,
Mumbai - 400 028.

4. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Prabhadevi Exchange,
15th Floor, V.S.Road,
Dadar(W), Mumbai - 400 028.

5. Director (D.E. & V.P.),
D.E.Section, Department of Telecom,
Dak Bhavan, Parliament Street,
New Delhi-110 001. ... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan

...3.

(O R D E R) (O R A L)

Per Shri B.S.Jai Parmeshwar, Member(J)

Heard Shri S.P.Kulkarni, learned counsel for the applicant in both OAs - OA-196/96 and 339/96. Shri S.S.Karkera for Shri P.M.Pradhan for Respondents.

2. The applicants claime to have appeared for Telecom Engineering Service Group 'B' examination conducted in November,91. The TES Group 'B' examination consists of three papers. The eligibility for passing the examination is to ~~score~~ secure 40% in each subject and 50% in the aggregate.

3. The applicant in OA-196/96 has secured the following marks

I - 55, II-59 and III-39

The applicant in OA-339/96 has secured the following marks

I - 65, II-49 and III-39

Thus both the applicants could not make it in the said examination.

4. On 20/6/94, the respondents issued certain instructions regarding granting of grace marks to certain candidates. The letter dated 20/6/94 is at Annexure A to the OA at page 20. We feel it necessary to reproduce the entire copy of the order:-

...4.

I am directed to say that the question of grant of grace marks to candidates appearing in different departmental qualifying examinations with descriptive type question papers has been considered in detail and keeping in view the various constraints/factors, the following criteria has been adopted for considering grace marks in respect of candidates who fail in one paper in the departmental examination:-

(a) The candidate should have secured minimum pass percentage marks in all other papers except the one in which he has failed.

(b) The candidate should have done reasonably well in other subjects. This will be judged on the basis that he should have obtained at least minimum 50% marks in the aggregate in all papers put together.

(c) The benefit of the grace marks should be limited to a single paper and upto a maximum of three marks.

2. The above guidelines will be applicable only in respect of examinations held since 1993, the results of which are in the process of declaration or have been declared. Cases prior to 1993 need not be opened. This will not be applicable to examinations with objective type papers.

5. The Applicants have filed this application praying for a direction to the respondents to ~~be~~ implement the instructions contained in the letter dated 20/6/94 retrospectively from Telecom Engineer Services, Group 'B' ~~marks~~ examination conducted in 1991.

6. Their main contention for such relief is that in between November,91 and 20/6/94 no examination was conducted for the TES Group 'B'. Further, even after issuance of the said letter, the department has not conducted any examination. Thus they submit that the instructions contained in the Impugned letter dated 20/6/94 can~~not~~ be made applicable from ~~on~~ earlier date. [Instructions contained in the letter are clear in this respect.

...5.

7. The applicants have filed a rejoinder disputing the submissions made in the written statement and reiterating that they are entitled to be considered for implementation of the letter dated 20/6/94 from November,91 Examination.

8. It is well settled that All executive and Administrative Instructions ought to be brought into operation prospectively. It cannot be made retrospectively. Further, if we accept the contention of the applicants, and grant the relief as prayed for by the applicants, then it will create a situation whereby similarly placed candidates will also approach this Tribunal for such reliefs. Therefore we cannot direct the department to implement the instructions contained in the letter dated 20/6/94. The contents of the letter dated 20/6/94 are clear and unambiguous. The respondents are not intending to operate it retrospectively. Merely because no examination was conducted between November,91 and 20/6/94 is no ground to direct the respondents to implement the letter dated 20/6/94 from November,91 onwards. Further, the same ground cannot be made to contend that no examination has been conducted after 20/6/94. It is for the department to conduct the examination according to their schedule. We direct ~~that~~ the respondents to conduct the examination without much delay.

9. When merit and efficiency are the criteria for promotion (apart from the relaxed standard for the reserved community candidates) and due to

advancement in Science and Information Technology we fervently appeal to the respondents to consider the feasibility of enforcing the instructions contained in the letter dated 20/6/94 in this millennium.

10. We find no reasons to give any positive directions to the respondents as prayed for by the applicants. Thus we find no merits in the OAs and both the OAs are dismissed.

11. No orders as to costs.

(GOVINDAN S.TAMPI)
MEMBER(A)

(B.S.JAI PARAMESHWAR)
MEMBER(J)
27.2.2002

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