

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 562/96

Date of Decision 4.12.96

Sunetra C.Tare & Ors.

Petitioner

Shri A.G.Deshpande.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

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

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr. 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?


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 562 / 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

21 this the Wednesday day of November 1996.

1. Sunetra C.Tare,
Matrukrupa,
Tilaknagar,
Dombivli (East) - 421 201.
2. S.D.Gangwani,
A-12, Pee Dee Society,
Shri Ramnagar,
S.V.Road,
Borivali (West),
Mumbai - 400 009.
3. Vinod Tukaram Talekar,
T/s.Accountant, Dadar
Head Post Office,
Mumbai.

... Applicants.

(By Advocate Shri A.G.Deshpande).

V/s.

1. Union of India through
Secretary,
Ministry of Communications,
Sanchar Bhavan,
Sansad Marg,
New Delhi - 110 001.
2. Director General,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
3. Chief Postmaster General,
Maharashtra Circle,
Mumbai.
4. Director General,
Department of Telecom,
Sanchar Bhavan, Sansad Marg,
New Delhi - 110 001.
5. Chief General Manager (Telecoms),
Maharashtra Circle,
Mumbai.

... Respondents.

(By Shri S.S.Karkera for Shri P.M.Pradhan,
counsel for Respondents.

O R D E R

¶Per Shri B.S.Hegde, Member(J)¶

Heard Shri A.G.Deshpande, counsel for the applicants and Shri S.S.Karkera (for Shri P.M.Pradhan), counsel for the Respondents.

2. In this O.A. the applicants are seeking directions to the Respondents No.1 to 3 to hold for the Postal Wing Personnel the Part - I and II Examinations prescribed for Recruitment to JAO's Service regularly every year commencing from 1996 and to direct the Respondents No.1 to 5 to allow the Postal Wing Officials like the applicants the option, available in terms of Rule 8(2) and (3)(a) of the Recruitment Rules, to appear for Telecom Wing Examinations commencing in the month of December, 1996.

3. In this connection, the learned counsel for the applicants Shri A.G.Deshpande relies upon the combined ^{which} Recruitment Rules, Rule 8(2) and 8(3)(a)/reads as follows:

"Rule 8(2) :- Part-I of the Departmental Examinations shall be common to both the JAO's in the Telecom wing and the JAO's in the Postal Wings.

Rule 8(3)(a):- Any person after passing Part - I of the Departmental Exam may exercise an option to appear in Part II of the Departmental Exam to be held for JAO's in the Telecom Wing or Part-II of the Departmental Exam to be held for the JAOs in the Postal Wing and the option once exercised shall be final."

In view of the above, the counsel for the applicants contends that the applicants are eligible to appear for the examination and suitable directions may be given to the Respondents to allow them to appear in the examination which is to be held in the month of December, 1996.

BR

4. In reply, the learned counsel for the Respondents Shri S.S.Karkera draws our attention to the reply filed by the Postal Wing, as well as, the Telecom Wing. Admittedly, the applicants are the employees of the Postal Wing and both the Postal and Telecom Wing has been bifurcated in the year 1985 and thereafter respective officials are governed by the respective Recruitment Rules. In the affidavit filed by the postal wing it is stated that the application filed by the applicants is not maintainable since the prayer made in the application is vague and mis-conceived inasmuch as the applicants seek directions to the Respondents for holding the examination of JAO Part-I and Part-II because the said examination is to be conducted by the Department of Posts in accordance with the vacancies existing in the circles and therefore the applicants cannot pray for any reliefs for holding the said examination since the said examination is to be conducted in accordance with rules. It is also stated that normally the said examination of JAO Part-I and II of Postal Wing are scheduled to be held during the month of November each year as fixed by the Director General, Department of Posts, New Delhi and that the last examination for JAO Part-I (Postal Wing) was held during November, 1992 and March, 1993. In the year 1993 the examination was postponed by the Director General Department of Posts for administrative reasons. JAO Part-II Examination was also held during the month of

July, 1994 for those who have qualified in JAO Part-I examination during November, 1992/March, 1993. It is further stated that there are large number of candidates those who have qualified in JAO Part-I and Part-II on the waiting list for appointment to the post of JAO and because of non-existence of vacancies, the said earlier successful candidates could not be appointed. Therefore, they did not conduct any further examination till they exhaust the persons listed in the panel. Further it is submitted that consequent upon the bifurcation of the then P & T Department into Postal Wing and Telecom Wing Department of Post and Department of Telecom were formed and the Recruitment Rules were also amended and by notification dt. 12.12.1986 the Department of Telecom and Department of Posts is having separate entity the required number of posts of JAO is to be filled in accordance with the existing vacancies and since there are number of candidates those who have qualified in the JAO Examination are waiting for their appointment and because of the said fact no examination has been held after 1993. So far as the SC/ST backlog the Department has conducted JAO examination and the action taken by the Respondents was in accordance with the Rules. Therefore, the applicants have not made out any *prima facie* case in this O.A. since they have no right for demanding for conducting the said examination and that before announcing the examination they must see the vacancy position and then only they can call for the applications.

5. Similar affidavit has been filed on behalf of Respondents No.4 and 5 by Assistant General Manager (Legal) working under the Office of the Chief General Manager, Maharashtra Circle, stating that prior to bifurcations of Postal and Telecom wings into two departments, Exam for the post of JAOs were controlled according to Recruitment Rules of 1976 which came into force w.e.f. 1.4.1976. It is true that under Rule 8(2) Part-I of the department exam shall be common to both the J.A.Os in the Telecom Wing and the J.A.Os in the Postal Wing, and under Rule 8(3)(a) any person after passing Part-I of the Departmental exam may exercise an option to appear in Part-II of the departmental exam to be held for the J.A.Os in postal wing and the options once exercised shall be final. However, after bifurcation into two wings viz. Department of Posts and Department of Telecom Rule 8(2) and 8(3)(a) were amended which were notified by letter dt. 12.12.1986 which runs as under:-

"8(2) :- Persons of Department of Telecom shall be eligible to appear in Part-I of the Departmental Exam for the posts of the JAOs if they have rendered 3 years continuous service.

8(3) :- Any person who qualified in Part-I of the department Exam (including a person from department of Posts) who had exercised the options to appear in Part-II of the departmental Exam in the Department of Telecom, before the commencement of amended rules shall be eligible to appear in Part-II of the said Exam."

By virtue of the bifurcation of Postal and Telecom wings into two separate and independent Departments viz. Department of Posts and Department of Telecom, the

privilege was extended only to those employees of Postal Wing to appear in Part-II of J.A.Os exam in Telecom Wing, who have passed Part-I Exam in Postal side. It is an admitted fact that none of the applicants have passed Part-I exam and therefore, the question of letting them to appear for exam does not arise.

6. We have heard the ~~counsel~~ for the parties at admission stage finally. In the light of the pleadings of the parties and in the facts and circumstances of the case, we do not see any merit in the O.A. Since the applicants have not made out any *prima facie* case for our interference and considering the facts and circumstances of the case, we do not find any merit in the O.A. Therefore, the question of giving any direction to the Respondents to allow the applicants to appear in the exam does not arise. Accordingly, the O.A. is ~~dismissed~~, with no order as to costs.


(P.P.SRIVASTAVA)
MEMBER(A).


(B.S.HEGDE)
MEMBER(J)

B.