

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.Nos.573/99 & 653/99

Dated this the 2nd day of November 2000.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. A.I.Inamdar,
Sub-Divisional Engineer,
O/O the D.W.D.(N),MTNL,
Wadala, Mumbai and Ors.

2. M.R.Chimmad,
Sub-Divisional Engineer,
Coaxial Maintenance,
Telecom Building No. 1,
M.G.Road, Fort,
Mumbai and Ors.

... Applicants

By Advocate Shri R.P.Saxena

V/S.

Union of India through
The Secretary,
Department of Tele-Communication,
Sanchar Bhavan, Ashok Road,
New Delhi and Ors.

... Respondents

By Advocate Shri V.S.Masurkar

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ORDER

(Per : Shri S.L.Jain, Member (J))

In both the OAs. (573/99 & 653/99) same question of fact and law is involved, therefore, we proceed to decide both the OAs. together.

2. The applicants seek the following reliefs :- to direct the first respondent to specifically work out the vacancies representing the 1/3rd quota in the TES Group-B meant for the Junior Engineers coming out successful at the Competitive Examinations after the commencement of the Recruitment Rules for the TES Group-B category in 1981 upto 1988 on year-wise basis, a direction to calculate the vacancies belonging to the 1/3rd quota to be filled up with the Junior Engineers who had qualified at the Departmental qualifying Examination, but not at the Departmental Limited Competitive Examination, to indicate whether at the relevant point of time when the qualifying officers were promoted against the 1/3rd quota of vacancies set apart for the competitive officers when a competitive examination had already been held and the results thereof had already been declared, the first respondent should further ascertain the number of such competitive officers who came out successful in that competitive examination, with a direction to carry-over of the 1/3rd quota of vacancies meant for competitive officers from year to year till the next competitive examination is held and competitive officers

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based on such an examination became available, the slots meant for the competitive officers should then be filled up only with the competitive officers, though they cannot be given the benefits of pay, etc. till the time they are actually promoted against that quota of vacancies and occupy those posts on promotion, but they should be given seniority over the qualifying officers who have so far occupied those slots meant for competitive officers, the slots meant for the competitive officers which have been filled with the qualifying officers should be vacated by the concerned qualifying officers and they should be accommodated against the slots available against the 2/3rd of the vacancies in the TES Group-B cadre meant for the qualifying officers depending on their seniority in the subsequent years. A further direction is sought to the effect that incompetent examination in the year 1988, the officers coming out successful in the ratio of 2:1 as per Recruitment Rules, 1981 allot/refix the seniority of the applicants accordingly and consider them for adhoc promotion in Senior Time Scale from the date persons junior to them are officiating as such, with all consequential benefits.

3. The applicants are working as Sub-Divisional Engineers in the cadre of Telecom Engineering Service Group-B under the control of Respondent No. 2. They are governed by Recruitment Rules called the "Telecommunications Engineering Service (TES) (Group 'B' Posts) Recruitment Rules, 1981". The applicants

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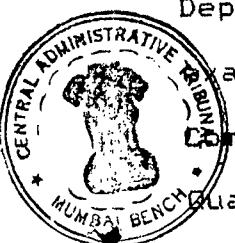
appeared for competitive examination in the year 1988 and declared successful. Their C.R. Dossiers were called for promotion, their quota being 1/3rd based on vacancies, the vacancies were declared as 118, hence they could not be promoted during the relevant year. C.R.Dossiers of 29 candidates were called and only 3 candidates selected as per order dated 1.9.1989 of Respondent No. 1.

4. Telecommunications Engineering Service (Group 'B' Posts) Recruitment Rules, 1981 specifically provides for promotion to the cadre of TES Group -B, through (a) the selection of eligible officers passing a Departmental Qualifying Examination, minimum pass marks being 40% and 35% for general candidates and SC/ST respectively, based on seniority-cum-fitness, and (b) the selection of eligible officers through a Limited Departmental Competitive Examination, minimum pass marks being 50% and 45% in each paper for general candidates and SC/ST candidates respectively based on merits, in the ratio respectively of 2/3rds and 1/3rd of the vacancies. As per Appendix-I, Clause 2 (iii) the inter se seniority of officers who have qualified in the Departmental Qualifying Examination and those who have qualified in the Limited Departmental Competitive Examination shall be in the ratio of 2:1, starting with the officers selected by the method of selection by the Departmental Promotion Committee (DPC) on the basis of Qualifying Examination. In case there are more than one candidate for the last place by Competitive Examination, the seniormost officials have the place and the rest shall be rejected and no competitive list will be carried over to the next selection.

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5. Junior Engineers who have completed five years of regular service in the grade on the first day of January of the year in which the examination is held are eligible to appear in Departmental Qualifying examination as well as in Limited Departmental Competitive Examination. The candidates have the option to take both the examinations together or to take Departmental Qualifying Examination initially and the Competitive examination in subsequent years. However, for appearing in the Competitive examination, it is obligatory to qualify in the Qualifying Examination.



6. Ernakulam Bench of the Central Administrative Tribunal in OA.NO.982/95 decided on 3.2.1998, following directions have been issued :-

" (i) The first respondent shall specifically work out the vacancies representing the 1/3rd quota in the TES Group-B meant for the Junior Engineers coming out successful at the Competitive examinations after the commencement of the recruitment Rules for the TES Group-B category in 1981 upto 1986. This shall be done year-wise from 1981 till the year 1986, in which year the applicants became qualified as competitive officers eligible for being promoted to the TES Group-B cadre against the 1/3rd quota.

(ii) The first respondent is directed then to calculate year-wise how many of those vacancies belonging to the 1/3rd quota were filled up with the Junior Engineers who had qualified at the departmental Qualifying examination, but not at the Departmental Limited Competitive examination. They shall also indicate whether at the relevant point of time when the qualifying officers were promoted against the 1/3rd quota of vacancies set apart for the competitive officers, a Competitive examination had already been held and the results thereof had already been declared. They shall further ascertain the number of such competitive officers who came out successful in that competitive Examination.

(iii) The first respondent is directed thereafter to permit the carryover of the 1/3rd quota of vacancies meant for competitive officers from year to year till the next competitive examination is held and competitive officers based on such an examination became available. The slots meant for the competitive officers shall then be filled up only with the competitive officers, though they cannot be given the benefits of pay, etc., till the time they are actually promoted against that quota of vacancies and occupy those posts on promotion. But they shall be given seniority over the qualifying officers who have so far occupied those slots meant for competitive officers. The slots meant for the competitive officers which may have been filled with the qualifying officers shall be vacated by the concerned qualifying officers. They will be accommodated against the slots available against the 2/3rd of the vacancies in the TES Group-B cadre meant for the qualifying officers depending on their seniority in the subsequent years.

(iv) This exercise shall be completed as expeditiously as possible and in any case in four months from today under intimation to the applicants."

7. The grievance of the applicants is that after the order of Ernakulam Bench in OA.NO.982/95 dated 3.2.1998 referred above, vacancy position for their quota of 1/3rd came to light which is as under : -

(a) Vacancies remained unfilled after 1982 examination and diverted to qualifying officers in addition to their 2/3rd quota	...	= 300
i) Vacancies for the year 1983	...	= 150
ii) Vacancies for the year 1984	...	= 220
iii) Vacancies for the year 1985	...	= 102
iv) Vacancies for the year 1987	...	= 94
v) Vacancies for the year 1988	...	= 118
vi) Total vacancies upto the year 1988	...	= 984

(b) Candidates selected and promoted on the basis of 1986 examination	...	= 381
1987 examination	...	= 94
1988 examination	...	= 118

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(c) Vacancies remained unfilled after 1988 examination	...	= 391

On perusal of the same, it is clear that there were 118 vacancies in the year 1988 while only 3 vacancies were filled as per Memorandum dated 1.9.1989. The respondents have failed to carry forward the 1/3rd vacancies meant for the applicants' quota to the subsequent years of examination. The appointments on promotion in excess of 2/3rd quota fixed for promotees can be treated as regular appointments only when vacancies were available against the 2/3rd quota against which the same appointments will be regularised. The respondents have no right to transfer the 1/3rd quota fixed for competitive officers to qualifying officers in excess of their 2/3rd quota. The said act of the respondents is irregular and hit by equity clauses enunciated in the Constitution of India. The applicants have been deprived to hold the higher posts infraction of rules against 1/3rd quota meant for them being qualified competitive officers of 1988 batch. The impact of the action of the respondents not to carry over the vacancies of 1/3rd quota is that those who qualified the competitive examination in the year 1989 or so have become seniors to the applicants without any fault of the applicants. Thus, the equals have been treated unequal without any fault of the applicants. Thus, the applicants are entitled to the appropriate ranking to be given in the select list and appointments on promotion as appointments are delayed for no fault of the applicants.

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8. The applicants represented the matter vide representation dated 11.11.1998 which was forwarded on 28.12.1998 but no response to the same. Hence, notice dated 24.4.1999 was also served in respect of the same. The respondents are duty bound to implement the order passed by the Ernakulam Bench as party to the same. Hence, this OA. for the above sought reliefs.

9. The respondents have resisted the claim stating that the application suffers with delay and laches, as the applicants are agitating the grievance in respect of the years 1981 till 1988. It has been further stated that judgements in other's cases does not give a rise to any cause of action in favour of the applicant. The qualified officers are not made parties to the present petition, hence, the OA. suffers from the defects of non-joinder of necessary parties as the applicants are seeking re-casting of seniority list of the entire cadre of TES Group 'B'. The dispute between the applicants and the cadre of qualified officers is in respect of inter se seniority. There is no provision in the Recruitment Rules to the effect that vacant slots of the earlier competitive quota will be filled up by the officials pertaining to the subsequent year competitive quota. It is also alleged that since no competitive quota candidates for promotion to TES Gr.'B' were available during 1982, all the 300 vacancies available were filled up with qualifying quota and accordingly seniority list No. VII was issued. The same is the position for the years 1983 and 1984 also. The seniority list No

VII, VIII and IX was quashed by the Ernakulam Bench while deciding the same OA. and the said judgement is being implemented. A decision was taken not to leave any slot vacant after serial No.273 for competitive quota as no competitive quota candidate was available for these years and keeping of slots vacant would have resulted in the revision of subsequent seniority list which was not ordered by CAT Ernakulam Bench and reversion of already promoted TES Gr.'B' officers. Hence prayed for the dismissal of the OA. along with the cost.

10. In rejoinder affidavit, the applicants have stated that a decision not to leave any slot vacant is arbitrary, illegal and contrary to recruitment rules referred to above. It is further asserted that the applicants are seeking only exchange of their quota as all the applicants have been promoted to the higher posts. There is no provision for diversion or assignment of the quota. The action of the respondents is not in accordance with the rules and in compliance of the judgement of CAT, Ernakulam Bench in OA.NO.982/95.

11. The applicants have based their claim on the decision of Ernakulam Bench of Central Administrative Tribunal in OA.NO.982/95 decided on 3.2.1998 which is referred to in para 4.6 of this OA. Among other objections, one of the objection of the respondents is that the qualified officers are not made parties to the present petition, hence, the OA. suffers from the defect of non-joinder of the necessary parties as the applicants are

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seeking recasting of seniority list of the entire cadre of TASD Group. The dispute between the applicants and the cadre of officers is in respect of inter-se seniority. Before we proceed to examine the merits of the case, it is necessary to deal with this objection for the reason that it goes to the root of the case.

12. On perusal of the order of CAT, Ernakulam Bench in OA.NO.982/95, we find that Respondent Nos. 4 & 5 B.A.Thomas and M.Balachandran were the private respondents. Further perusal of the order makes it clear that no question of non-joinder of necessary party was raised before the Tribunal. In OA.NO.507/94 decided by C.A.T. Hyderabad Bench on 22.4.1998, perusal of the order makes it clear that Respondent No. 3 to 26 were arrayed as private respondents. The said Bench passed the order to the following effect that the seniority of the applicants in this OA. should also be recognised on the basis of clarification given by Ernakulam Bench of the Tribunal extracted above. As the private respondents were arrayed as party respondents, hence question of non-joinder of parties was not involved in the said case. CAT,

13. CAT, Bangalore Bench (OA.NO.961/99) decided on 13.6.2000. Perusal of para 7 makes it clear that there was an objection to the effect that in case the present OA. is decided in favour of the applicant based on the principles laid down by the Ernakulam Bench quoted above, it would affect a large number of inter-se positions of seniority already allotted and acted

upon. It is also made clear by the respondents that the applicants ought to have impleaded those officers who had merely qualified at the qualifying examination, but actually have been promoted against the slots which fell under the quota meant for the officers qualifying at the competitive examination. On behalf of the respondents, it has therefore been argued that for the reason of non-joinder of the necessary parties, the OA. should be dismissed. Thus, the said question was raised before the Bangalore Bench and it was decided in para 8 of the said OA. which is as under :-


" We choose to deal with the last objection at this stage. It is evident to us, based on the pleadings of the parties before us, that the prayer of the applicant essentially is for granting him the benefit of promotion against one of the unfilled slots meant for the officers qualifying at the Competitive examination, which admittedly the respondents have not only not carried forward for such officers, but also have filled up with officers qualifying merely at the qualifying examination. We feel that in this situation it would obviously have been infeasible for the applicant to implead all the incumbents, who have been so promoted to the TES cadre and given different seniority positions throughout that period, starting in 1982/83, from among the officers qualifying only at the qualifying examination till the applicant qualified at the Competitive Examination in 1988. We, therefore, do not feel that the alleged failure, that is the non-joinder by the applicant of the said latter category of officers, can be a valid ground for dismissing the present OA."

Thus, the objection of the respondents have been negatived by the Bench.

14. CAT, Chandigarh Bench in OA.NO.473/99 while deciding the said OA. on 30.6.2000 has decided the similar matter but on perusal of the order, we find that question of non-joinder of necessary parties was not raised in the said OA.

15. Before us, the question of non-joinder of necessary parties is being raised by the respondents. We are not persuaded by the order of the C.A.T. Bangalore Bench for the reasons herein after mentioned. In AIR 1963 SC 786 in case of Udit Narain Singh vs. Board of Revenue, the Apex Court has held as under :-

" A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

 A party whose interests are directly affected is, therefore, a necessary party. It has been further held that the question of making such a person as a party to writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo moto approach the Court for being impleaded therein. It is also held that it is in the discretion of the Court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo moto or on the application of a party to the writ or an application filed at the instance of such proper party.

16. In AIR 1985 SC 167 Prabodh Verma vs. State of UP, the Apex Court has held that :-

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" A High Court ought not to hear and dispose of a writ petition under Art.226 without the persons who would be vitally affected by its judgement being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

17. In 1987 Supp. SCC 15, Ranga Reddy vs. State of AP., it has been held by the Apex Court that :-

" We are of the view that the Andhra Pradesh Administrative Tribunal ought not to have determined the question of seniority without the appellants in both the appeals being before the Tribunal since the determination of this question would directly affect the interest of the appellants."

18. Before Chandigarh Bench in OA.NO.473/HR/99, the question for non-joinder of necessary parties was not involved, before Hyderabad Bench and Ernakulam Bench as referred above, the affected parties were arrayed as party respondents.

19. The applicants have claimed the relief to the effect that the slots meant for the competitive officers should then be filled up only with the competitive officers, though they cannot be given the benefits of pay, etc., till the time they are actually promoted against that quota of vacancies and occupy those posts on promotion. But, they should be given seniority

over the qualifying officers who have so far occupied those slots meant for competitive officers. The slots meant for the competitive officers which have been filled with the qualifying officers should be vacated by the concerned qualifying officers. They should be accommodated against the slots available against the 2/3rds of the vacancies in the TES-Group-B cadre meant for the qualifying officers depending on their seniority in the subsequent years. Thus, if on merits the claim of the applicants is allowed, the qualifying officers who were occupying the slots meant for competitive officers are bound to be affected. In the circumstances, the qualifying officers are necessary parties as they would be affected if the decision in favour of the applicant is arrived. Hence, in view of ratio laid down in Udit Narain Singh's case, the qualifying officers are necessary parties for the reason that without whom no order can be made effective. In the similar way, in view of ratio of Prabodh Verma's case, as the qualifying officers are affected parties, it is not desireable to hear the OA. without their being impleaded as party respondents. It is not necessary that all the persons affected are made parties but at least in a representative capacity they must be joined.

20. We are inclined to afford an opportunity to the applicants to join the qualifying officers as respondents, it may even be in representative capacity, before we proceed to decide the matter on merits, so that if an order on merits is passed in

favour of the applicants, it can be effectively carried out by the official respondents without there being any gruge or objection from the side of private respondents as they would be the party to the OA./petition. The reason is that any order that may be passed in their absence, such party can ignore with the result that Tribunal's order remains ineffective.

21. As qualifying officers whose interest are directly affected are necessary parties, we direct the applicants to add of them or may be in representative capacity if their number is too large to join them as respondents by the next date. The applicants may file an application for impleading the qualifying officers as stated above within three weeks from the date of this order.

22. List the case for orders on 30.11.2000

Certified True Copy
Date 21.11.2000

Parry
Section Officer

Central Admin Tribunal,
Cc, Bombay Bench.