

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 410 of 2000.

Dated this Tues Day, the 19th day of December, 2000.

Shri V. R. Deosarkar, Applicant.

Shri G. S. Walia, Advocate for the
applicant.

VERSUS

Union of India & Another, Respondents.

Shri V. S. Masurkar, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J)..

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of
of the Tribunal ? No
- (iii) Library. yes

S. L. Jain
(S. L. JAIN)
MEMBER (J)

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

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

V. R. Deosarkar,
Trunk Supervisory Operative,
Nanded.

Residing at -
Sahyadri Nagar,
Nanded - 431 605.

... Applicant.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
The General Manager,
Maharashtra Telecom Circle,
Mumbai - 400 001.

2. General Manager,
D.O.T., Godavari Complex,
Shivaji Nagar,
Nanded - 431 602.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the Respondents to call the applicant for the examination/re-examination to be held for the post of Junior Telecom Officer (J.T.O.) or to hold a supplementary examination for the same for the applicant.

2. The applicant is working as a Trunk Supervisor Operative (T.S.O.) in the Telecom Department and has applied for the post

Signature

of J.T.O. being qualified and eligible for it. The departmental competitive examination was held on 15th and 16th May, 1999 which but he could not appear in the examination for some reasons. However, the examination was cancelled as it was found, according to the knowledge of the applicant that certain mal practices had taken place in the conduct of the said examination. A fresh examination is to be held on 17th and 18th June, 2000. The respondents, vide letter dated 30.05.2000 (exhibit 'A') clarified that only those candidates who had appeared for the examination which was held on 15th and 16th of May, 1999 will be eligible to appear for the re-examination which is to be held on 17th and 18th June, 2000.

3. In this O.A. the grievance of the applicant is that the impugned action of the respondents is violative of Article 14 and 16 of the Constitution of India, against the principles of natural justice, the action of the respondents is punitive, unconstitutional, arbitrary, erroneous, misuse and abuse of the authority vested in it.

4. The claim is resisted by the respondents. On perusal of the O.A. we find that the applicant could not appear for the examination for some reasons. The reasons are not mentioned by the applicant as such the Tribunal is not in a position to arrive at a conclusion that whether the reasons were sufficient one for not appearing for the examination to be held on 15th and 16th May, 1999. The Learned Counsel for the respondents argued that the applicant was on duty on the date of examination.

Signature

5. The subsequent examination was to be held on 17th and 18th June, 2000. The O.A. is filed on 19.06.2000, certainly after the examination was over.

6. The Respondents had taken a policy decision not to allow the candidates for the said examination who have not appeared in the examination which was held on 15th and 16th May, 1999. On perusal of the relief claimed, the said policy decision of the respondents is not being challenged.

7. We agree with the Learned Counsel for the applicant that there is a right in favour of the applicant for consideration when he is qualified and eligible for the examination. We are of the considered view that the right is to be exercised with due diligence and if the applicant waives his right without any reason, certainly he cannot ask the respondents to hold a supplementary examination for him.

8. The question of principles of natural justice being violated, action punitive, unconstitutional, arbitrary or misuse of the power by the respondents does not arise in view of the pleadings of the applicant and the examination being departmental competitive examination. To allow the applicant to appear singly in such examination would mean there is no competition between all the candidates who were eligible and applied for the same.

9. There may be a legal right in favour of the applicant but the applicant failed to exercise the same. The law helps to those

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who are vigilant one. The policy decision of the respondents is not being challenged. There is no malice in the action of the respondents. The delay suffers from delay and laches. The result of the examination is also declared. Hence, in our considered opinion, the O.A. deserves no merit, is liable to be dismissed and is dismissed with no order as to costs.

S.L. Jain
(S. L. JAIN)
MEMBER (J).

OS*

B. Bahadur

(B. N. BAHADUR)
MEMBER (A).