


OA 104/2001

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA 104/2001

Hon'ble Vice ~~Chairman~~ / Member (J) /  
Member (A) may kindly see the above judgement for  
approval / signature.

  
~~V.C. / Member (J) / Member (A)~~

Hon'ble ~~Vice Chairman~~

Hon'ble Member (J)

Hon'ble ~~Member (A)~~

I agree P.O.M. -

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 104 of 2001.

Dated this 28th the May day of \_\_\_\_\_, 2001.

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

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

1. Miss Manisha Sadashiv Tamboli,  
Residing at 40 Sawedi Naka,  
Ganesh Colony, Ahmednagar.
2. Mr. Ramakant Sitaram Bhagwat,  
Residing at Lendkar Balikashram  
Road, Ahmednagar.
3. Mr. Kumathkar Shivaji Eknath,  
Residing at Ambikanagar,  
Kedgaon, C/o. Kumathkar Classes,  
Ahmednagar.

... Applicants.

(By Advocate Shri U. Warunjikar)

VERSUS

1. Union of India through  
the Ministry of Telecommunication,  
(Now Bharat Sanchar Nigam Ltd.),  
Sanchar Bhavan,  
New Delhi.
2. The Chief General Manager,  
Maharashtra Circle,  
Telephone Exchange Building,  
Fort,  
Mumbai - 400 020.

.... Respondents.

(By Advocate Shri V. S. Masurkar)

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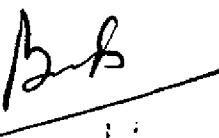
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O R D E R

PER : Shri B. N. Bahadur, Member (A).

This is an application made by three Applicants seeking the relief from this Tribunal for a declaration that Applicants have been successful in the examination held in the month of June, 2000. Consequential reliefs on the basis of such declaration are also sought. The facts of the case, as brought forth by the Applicants are that they joined the services of the Respondents on 02.07.1990, 28.03.1984 and 29.03.1982 respectively. Applicant No. 1 joined on a reserved post meant for physically handicapped person and claims to be more than 50% disabled. Applicant No. 2 claims to be a Ex-Serviceman. The Applicants state that they are working as Sr. Telecom Office Assistants (STOA, for short) and the promotional post is Joint Telecom Officer (J.T.O.). A fifteen per cent quota is provided for S.T.O.As.

2. The Applicants further aver that Respondents had decided to conduct an examination for the promotional post of J.T.O. in June, 2000. The Applicants were not shown in the select list of successful candidates and had asked for retotalling/verification in regard to the papers in Mathematics only. Representation was also made and these are described in detail.



3. The main grievance of the Applicants is that a large portion of the Mathematics paper (about 54 %) was outside the prescribed course. This contention is expounded by citing from the details of the Mathematics syllabus. The Applicants pray for the concerned record to be seen, and also for the grant of grace marks, which can be awarded to the extent of three marks as per rules.

4. The Respondents have submitted a reply, through a Written Statement, resisting the claims of the Applicants as being based on presumptions and surmises, and thereafter giving parawise replies. The core point made by the Respondents is that representations were received alleging questions pertaining to 54 marks being out of syllabus, and that an officer of the J.A.G. level was appointed by Chief General Manager to go into the matter. Details in this regard are recorded and the point made that due to printing mistake in question 1(b) of section (B), instructions were given to grant five marks to all candidates who had attempted Question No. 1 of Section (B). Due to further representation and examination of the matter, it was also decided to uniformly award six marks to every candidate irrespective of whether a candidate attempted the question or not.

5. We have also heard Learned Counsel on both sides and have perused the relevant record of Statement of marks produced before us during the course of arguments. Learned Counsel for the

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Applicants, Shri Warunjikar, argued the case at some length, drawing attention to the annexures and the rejoinder filed by the Applicants. He specially drew attention to the report at page 37 and 38 (exhibit R-1) as also to the chart at page 51 showing the marks secured by the three Applicants. It was argued by the Learned Counsel that para 17 (page 34) of the Reply statement showed that there was a mistake of eleven marks, and that this was an admission of the mistakes made on the part of the Respondents. As such, he argued, that eleven marks would need to be provided to each one of the three Applicants.

6. Another point made by the Learned Counsel for Applicant was by way of doubting the competence of the officer who made the assessment in the aforesaid report at exhibit R-1. He said that this officer <sup>was</sup> ~~who~~ may not have the competence of arriving at the conclusion about the maths paper, and that the Applicants had, in fact, commissioned a private person who has declared many more question to <sup>be</sup> ~~the~~ out of course. The copy of report filed as affidavit of such an expert in the rejoinder by Applicant as exhibit 'A' was referred to in this connection.

7. Arguing the case on behalf of the Respondents their Learned Counsel, Shri V. S. Masurkar, raised the point of jurisdiction stating that the orders will need to be implemented by Bharat Sanchar Nigam Limited (B.S.N.L.) and that in view of formation of B.S.N.L. now, the Applicants were under their jurisdiction. As such, he contended that the application was lacking maintainability, in view of lack of jurisdiction of this

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Tribunal in regard to B.S.N.L. Applicant had since given option to be absorbed in the B.S.N.L. even though ~~he was~~ <sup>Ans</sup> after the date of filing.

8. Arguing the case on merits, Learned Counsel for Respondents rested his case on the circular at page 39 (exhibit R-2) as also the decision regarding grace marks in the said examination at exhibit R-4 (page 41). He also depended on the records which were relevant and which were duly shown to us by him.

9. We must mention that we also heard the Learned Counsel for Applicants on the point of maintainability. It was argued by him that when the application was made, jurisdiction clearly rested here and that option for going to B.S.N.L. was given after the selection test was held. He also made the point that although the Applicants had admittedly given option to shift to B.S.N.L. around March 2001, no orders had yet been received on this, and hence it has to be assumed that they are still on deputation.

10. We have considered all papers in the case and the arguments made on both sides. We have also seen the relevant record produced before us.

11. It is clear that the Applicants were all with the Government department directly, ~~At~~ the time of the examination

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for the selection process and subsequent developments leading to their failure. They were also similarly placed at the time of filing of the application before this Tribunal. Thus, the selection process, and specially the examination about which they are aggrieved, was conducted under the aegis of Government of India and under the circumstances above, the party, as indeed shown in the OA can be construed to be the Union of India through Ministry of Telecommunications. Hence we can proceed to examine the case on its merits.<sup>4</sup>

12. Now as regards the merits, the basic question that arises for our consideration, after going through the pleadings and arguments, is whether the benefit of eleven marks by way of grace marks can be provided to the three Applicants. In this connection, we have gone through the decision taken in regard to award of grace marks and also carefully considered the original record shown to us during arguments.<sup>1</sup> We find that there is no unfairness shown to the Applicants, as evident from the perusal of this record; Nor could any discrimination become evident from a perusal of the record brought before us. A certain decision has been taken in regard to the manner in which grace marks will be awarded uniformly, as brought on record vide the communication dated 14.9.2000 (exhibit R-4), and this seems to have followed, without any prejudice to any of the Applicants.


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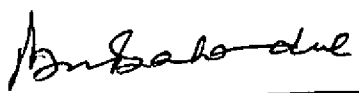
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13. Now in regard to the issue raised about the competence of the officer concerned who went into the matter relating to the "out of syllabus" nature of questions, we find no merit in this element of doubt which was made at the time of arguments. No reason was provided for us to doubt his competence. We were told, during arguments, that he was a qualified Engineer. We also do not see how we can allow a private experts' affidavit (referred to above) to carry any weight with us, irrespective of the merit of that gentleman. We cannot, as per settled law, carry out a roving enquiry into the examination process beyond what has been done by us, as discussed above. This much scrutiny is adequate in a claim being made before a Tribunal and we do not find any justification for the Applicants to come up and claim all eleven grace marks, as if a right, through a process of judicial determination when, as we have already discussed, a perusal of the record does not show any reason for doing so, and when no discrimination or violation of the principles of natural justice is evident.

14. In view of the case failing on merits, we have not examined the objection taken by the Counsel for Respondents regarding non maintainability of joint application. The case having failed on merits, we do not find any reason to interfere in the matter.

15. In the consequence, this O.A. is hereby dismissed with no order as to costs.

  
(S.L. Jain)  
Member (J)

  
(B.N. Bahadur)  
Member (A)