

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 678/90

Transfer Application No: --

DATE OF DECISION: 16/9/94

Ku.Meena Maniram Okey Petitioner

Mr.M.W.Harsulkar Advocate for the Petitioners

Versus

GM C.R.Bombay V.T. & 4 Ors.

-----Respondent

Mr.P.N.Chandurkar for R.Nos.1to3 Advocate for the Respondent(s)


None for respondents No.4 and 5

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri R.Rangarajan, Member(A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(R.RANGARAJAN)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A.678/90

Ku.Meena Maniram Ukey
and four others.

.. Applicants

-versus-

1. General Manager,
Central Railway,
Bombay V.T.
2. Divisional Railway Manager,
Central Railway,
Nagpur.
3. Chief Project Manager,
Railway Electrification,
D.R.M.C Rly.Office Complex,
Nagpur.
4. Union of India
through
the Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.
5. Railway Board through
its Chairman,
Rail Bhavan,
New Delhi.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri R.Rangarajan, Member(A)

Appearances:

1. Mr.M.W.Harsulkar
Counsel for the
Applicants.
2. Mr.P.N.Chandurkar
counsel for
Respondents No.1 to 3.
3. None for respondents
No.4 and 5 though
served.

JUDGMENT:
{Per R.Rangarajan, Member(A)}

Date: 16/9/94

The applicants five in number are

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..2/-

working as casual Telephone Operators in the Nagpur Central Railway Exchange. At the time of filing the application in the year 1990 it is stated that they have put in 6 to 8 years of service as casual Telephone Operators. By now all of them should have put in 10 years of service in the casual capacity as Telephone Operators. They were appointed initially by the Railway Electrification Project (Respondent No.3) and later handed over to the open line organisation for manning the exchange board. They came under the administrative control of Nagpur Division of the Central Railway as can be seen from Annexure 17. The regular telephone operators and the casual operators, who are applicants herein, are interchanged to man the boards in the exchange as required. 11 posts of Telephone Operators were created for manning the additional assets of the exchange boards. As per the recruitment rule 60% of the post of the Telephone Operators are to be filled up from the Khalasis of the Telecommunication Wing of the S&T department of Nagpur Division and 40% of the post are to be filled by direct by open market recruitment through RRB. recruitment. Volunteers were called for filling up the post of these telephone operators newly created and options were called for from the serving Class IV staff working in the Telecom wing having three years of service and having passed VIIIth standard by the DRM(P) Nagpur by letter dated August, 1990 vide Annexure 20. The applicants have also applied for the same

but their candidature were rejected on the plea that they do not belong to the feeder category of Class IV in the Telecom wing of the Central Railway and they are casual telephone operators appointed by the Railway Electrification viz. Respondent No.3. In view of the rejection of their candidature for appearing for the examination they have filed this application mainly with the sole prayer to declare that the applicants are eligible to be absorbed as Telephone Operators without any written test or viva-voce.

2. An interim order dated 22-8-90 was passed permitting the applicants to take appointment to the test for the newly created 11 post of Telephone Operators ~~xxxxxxxxxxxx~~ vide memorandum dated 8-6-90 (Annexure 16 to the application). However, as per the interim order the respondents were advised not to declare the results of the application till the case is decided. The application was amended subsequently to include Union of India through Secretary Railway Board and Chairman Railway Board as respondents to this application.

3. The main contention of the applicants is that the applicants herein have worked for a considerable period, say by now about over 10 years, and they have the right to be considered as Telephone Operators in view of their expertise gained in operation of the exchange boards and their qualification. They also state that 25% in open line of the vacancies are reserved for appointment of ~~xxxxxxxxxxxx~~ unskilled and semiskilled categories of the casual artisans working in the

Projects and Railway Electrification

against newly created assets vide Annexure-15.

On the same analogy the posts of Telephone Operators numbering 11 created now should be given to the casual telephone operators to the extent of 40%

which is earmarked for direct recruitment quota.

They further averred that all of them have attained temporary status and as they have put in more than three years of service in casual capacity they are entitled to be ^{absorbed} ~~to be~~ regularly as telephone operators.

4. As per the channel of promotion for telephone operators cadre, Railway Board has earmarked 60% of the vacancies to the departmental class-IV staff of Telecom wing with three years service condition and 40% by direct recruitment. Those who qualify against those percentages will be absorbed as telephone operators in the grade of Rs.950-1500(RPS) selection. The Railway Board's letter dt. 30-4-86 is reproduced below :

"Sub: Direct recruitment of Telephone Operators in initial scales of Rs.260-400(RS)

In terms of instructions contained in this Departments letter No:PC.III.73/S&T/4 dated 13-4-77 read with their letters No.E(NG)I-81-CFP-42 dated 21.1.82 and 4.9.82 the base grade posts of Telephone Operators in scale Rs.260-400 are required to be filled as under :-

- (a) 40% of the vacancies by direct recruitment through the RRBs with qualification of Matriculation or equivalent and in the age group of 18-25 years; and

- (b) 60% of the vacancies by promotion of Class IV staff in the Telecom Wing of S&T Department by a process of selection as prescribed for promotion of Class IV staff to Class III posts i.e. without insisting on Matriculation being the qualification.

2. It may please be confirmed that the posts of Telephone Operators are being filled in accordance with this Departments instructions referred to above. "

As per this letter 40% of the vacancies are to be filled by direct recruitment through RRB with the qualification of matriculation or equivalent and in the age group of 18 to 25 years, and 60% of the vacancies are by departmental promotion.

5. The applicants contended that they are eligible for posting as Telephone Operators against 40% quota earmarked for direct recruitment as they fulfilled all the conditions required for such direct recruitment. The learned counsel for the respondents stated that no such plea has been taken in the application and this plea is now taken at the time of hearing and hence the present request is not tenable. A perusal of the prayer will show that the applicants are interested only in their absorption as permanent Telephone Operators be it direct recruitment or departmental quota. Hence though a specific plea as above to take them against direct recruitment quota has not been specifically made in the application it may be presumed that the applicants are interested to get absorbed even against this quota. Hence the Tribunal have powers to mould the prayer for proper justice.

6. The second contention of the learned counsel is that they are not eligible for consideration for absorption as telephone operators against departmental quota of 60% as this will block the channel of promotion for those class IV staff of the telecom wing who have been regularly posted against the Class-IV post and are aspiring to become telephone operators. This contention is very valid as none who are not in the direct channel of promotion for departmental quota can be absorbed against ~~that~~ quota. Hence we do not propose to give any share of the telephone to the applicants herein operators against the 60% quota earmarked for promotion categories from lower feeder disregarding the rules. We make it clear that the casual telephone operators if at all entitled for absorption as regular telephone operators it can be only against the the direct recruitment quota of 40%.

7. The next contention of the learned counsel for the respondent is that the organisation under respondent No.3 is an independent organisation and it come directly under the Railway Board and as the Railway Board is not a party to this O.A. this O.A. is not maintainable. This technical objection in our opinion is not ~~tenable~~ sustainable as the respondent No.1 and 2 are having administrative control over the telephone operators as indicated above and in any case as the Union of India through their Secretary Railway Board and Chairman Railway Board has been included as respondents to this O.A. by amendment of the application their objection has no legs to stand.

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8. The respondents vigorously stated that 40% of the posts of telephone operators are to be filled through RRB and the applicants can apply through the RRB as and when the advertisement appears calling for application for such posts and regularise themselves. Comparing their case with that of casual fitters regularised against 25% quota as per Annexure-15 is not applicable in the case of casual telephone operators as they do not belong to the artisan category.

9. The casual telephone operators are working over 10 years by now in that capacity. Having acquired temporary status already and having been under the administrative control of the respondents No.1 and 2 whether they belong to artisan category or not the expertise gained by them is very valuable and hence they are entitled for the same treatment in absorption against direct recruitment quota as is done in the case of casual fitters as per annexure-15. In our opinion casual telephone operators herein are also placed in a similar situation as casual fitters as they have acquired considerable knowledge in the operation of the trunk boards and their experience will be of valuable assistance in the day-to-day functioning of the railway. It is not necessary that they should come under the casual artisan category to be appointed against direct recruitment quota. The very fact that they fulfil the necessary educational qualification for appointment against direct recruitment quota and they acquired considerable knowledge in the operation of the

exchange boards in the Railways, they are similarly placed as that of casual fitters for absorption against direct recruitment for appointment from the open market. They will be in no way inferior to the direct recruits of telephone operators who have no practical experience in operating the railway exchange boards. Hence we have no hesitation in saying that the prayer of the applicants for absorbing them against the direct recruitment quota is valid and due note has to be taken of the prayer. Respondent No.3 has suggested similar course of action to G.M., R.E., Allahabad as can be seen from page-5 of para-5 of the written statement of respondent No.1 and 2 dated 4-12-90. But it appears that no decision has been taken by the railway administration on this suggestion.

10. As it is stated that the telephone operators possess educational qualification more than matriculates and fulfilled the condition for direct recruitment, they are eligible to be considered for absorption as telephone operators in the grade of Rs.950-1500 regularly against direct recruitment quota provided they have passed the examination held in pursuance of the DRM Nagpur memorandum dated 8-6-90 against the newly created 11 posts of telephone operators for manning additional assets by way of exchange boards. As they had already appeared for the said examination and their results are yet to be declared, the results may now be announced and if they are qualified in the examination and possessed the qualification required for direct recruitment they may be absorbed against the 40% quota earmarked for direct recruitment of ..9/-

telephone operators. Five posts of the newly created 11 posts works out to 40% which is the direct recruitment quota to be filled by these applicants.


11. In the result the following direction is given :


Casual telephone operators including the applicants who have appeared for the selection held in pursuance of the memorandum dated 8-6-90 should be considered for absorption as regular telephone operators in the grade of Rs.950-1500(RSRP) against the direct recruitment quota of five posts out of eleven posts created in terms of memorandum at Annexure-20 provided:

- (i) they fulfil the minimum educational qualification for direct recruitment of telephone operators; and
- (ii) passed the departmental examination held in pursuance of the memorandum dated 8-6-90.

The upper age limit shall be relaxed to the extend of their service as casual telephone operators by the competent authority. Their seniority in the telephone operators grade of Rs.950-1500 shall be from the date they are regularly absorbed in pursuance of this order.

12. With the above direction O.A. is disposed of.
No order as to costs.


(R. RANGARAJAN)
Member(A)


(M.S. DESHPANDE)
Vice-Chairman

SLP 1639/95
Dismissed on 14.2.95
This order not to be
treated as precedent