

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 1 FEB 1994

APPLICATION NO(s) 344 of 1993.

APPLICANTS: R. Arunachalam

RESPONDENTS: Chief General Manager,
Telecom, Bangalore and Other.

TO.

1. Sri.H.Basavaraju, Advocate,
M.S.K.S. Building,
Sirur Park Road, Seshadripuram,
Bangalore-560 020.
2. The Chief General Manager,
Telecommunications, Karnataka Circle,
No.1, Old Madras Road, Ulsoor,
Bangalore-560008.
3. Sri.M.S.Padmarajaiah, Central Govt. Stng. Counsel,
High Court Building, Bangalore-560 001.
4. Dr.M.S.Nagaraja, Advocate, No.11, First Cross,
Second Floor, Sujatha Complex, Gandhinagar,
Bangalore-560 009.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 06-01-1994.

gm*

Issued on
2/2/94

olc

for *Mr. Chellu S*
DEPUTY REGISTRAR
JUDICIAL BRANCHES. 1/2/94

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.344/93

THURSDAY THIS THE SIXTH DAY OF JANUARY 1994

Shri Justice P.K. Shyamasundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member [A]

R. Arunachalam,
Age 31 years,
S/o late R. Raju,
Working as Office Assistant,
City Telephone Exchange,
TV Main, Sampangiramanagar,
Bangalore-560 027.

... Applicant

[By Advocate Shri H. Basavaraju]

v.

1. The Chief General Manager,
Telecommunications,
Karnataka Circle,
Now office at Near Lido
Talkies, Ulsoor,
Bangalore-560 008.
2. M. Amaranath,
Major,
Working as Junior
Telecom Officer,
Office of the Telecom
District Engineer,
Near Post Office,
Madikeri [Coorg Distt],
Karnataka State.

... Respondents

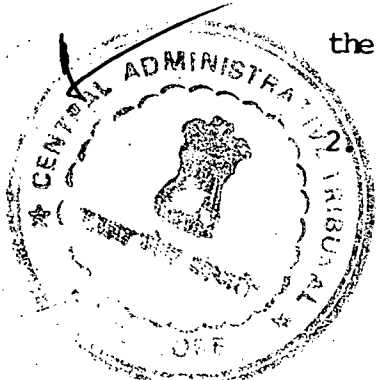
[By Advocate Shri M.S. Padmarajaiah, Senior
Standing Counsel for Respondent No.1 and
By Advocate Dr. M.S. Nagaraja for Respondent No.2]

ORDER

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. Heard. Admit. We propose to dispose off this application on its merits now that the pleadings are complete and we had the benefit of hearing the counsel on both sides.

This application relates to a grievance by a person belonging



to Scheduled Caste presently working as Office Assistant, City Telephone Exchange, Sampangiramanagar, Bangalore, who feels aggrieved by his non-promotion to the higher post of Junior Telecom Officer ['JTO' for short] which position he sought by taking departmental examination. It is not in dispute that such an examination was held on the 10th and 11th November 1990 comprising of 4 papers in which the aspiring examinees were examined, the papers being English and General Knowledge, Physics, General Science and Mathematics.

3. We are told that each subject carried 100 maximum marks and minimum of 33 for scheduled castes and 40 for general candidates is prescribed. It is also not in dispute that the applicant who appears to have done very well in 3 subjects scoring 75 in English and General Knowledge, 49 marks in General Science and 59 marks in Mathematics fared poorly in Physics securing only 12 marks and by virtue of this tally of marks he was declared as failed. He contends nonetheless that he is entitled for consideration of his claim to secure the higher job of JTO provided he was generously graced by adding enough grace marks that would ensure securing the minimum 33 marks for passing the Physics subject in which he is declared to have failed. Apparently he was not awarded any grace marks at all with the result notwithstanding the rule or as the learned counsel termed a department circular enjoined the liberal allocation of grace marks, still remained defeated in his attempt to secure the higher post of JTO. He now says that the whole exercise indulged in by the department in throwing him out of consideration zone by not giving

him adequate grace marks has resulted in forfeiting his chances of promotion that would have been otherwise his. In particular he submitted that one Amarnath who was subsequently impleaded herein, should have really been moved out and not given the slot to which he would have been otherwise eligible subject, however, to adequate grace marks being added.

4. We have heard the learned counsel Shri H. Basavaraj who appeared in support of the applicant and also the very ebullient standing counsel who says that we must place special premium on efficiency and merit and in this submission he was joined in by Dr. M.S. Nagaraja, learned counsel appearing for the impleading respondent Amarnath who maintains that the criterion enunciated in the circular by the Government, the condition precedent for declaring any person who had failed in the examination asks us if he was otherwise found suitable and if found suitable grace marks should then be awarded to bring him upto pass. He says that this essential aspect being agreed to put in operation before gracing can be done is conspicuously absent. In any view of the matter the benefit of granting extra marks to the applicant does not arise is his argument.

5. Having given our earnest consideration to the arguments on either side we think that this is a case in which the departmental authorities who are responsible for making recommendations in regard to promotions have failed to bear in mind the circular instructions on which both sides rely upon.

6. In this connection we invite attention to the circular instructions produced at Annexure F by the applicant dating back to 4.5.1981. We think it proper to reproduce the entire circular



and we would, however, like to emphasis the para 1 of the same.

"I am directed to refer to the letters noted in the margin on the above mentioned subject wherein relaxed standards for SC & ST candidates in qualifying confirmation and Departmental Promotion Examinations have been prescribed against the vacancies reserved for them.

2. The matter has been further examined by the P&T Board. It is observed that the basic objective in such cases is to decide whether SC & ST candidates who take departmental examinations are fit [at least 'not ~~fit~~'] to hold the post for which they are competing rather than going only by their percentage of marks. Accordingly the following decisions have been taken:

i. No special action is called for where adequate number of SC/ST candidates qualify for the reserved posts.

ii. In examinations where the required number of candidates do not qualify even according to the relaxed standards, the cases of failed candidates should be reviewed on the basis of confidential reports, the overall performance in the examination etc. by a Committee of senior officers so as to assess their suitability/unsuitability. The committee will consist of the Head of the Circle and a Director of Postal Services/Telecom Director in the District, nominated by the Head of the Circle in respect of recruitment to Group 'C' posts. In the case of the Civil Wing, the concerned Superintending Engineer may be included in the Committee instead of a Director. As regards Group 'D' posts, the Committee will consist of the Director Incharge of the Region concerned and a senior Time Scale Officer as may be nominated by the Head of the circle. In the case of Civil Wing, the concerned S.E. and a Senior Time Scale Officer, nominated by the Head of the Circle, will form the Committee.

iii. In the case of candidates considered not unfit for promotion, grace marks should be added to bring them upto the qualifying standard. There will be no limit to giving grace marks to the candidates who are not otherwise unsuitable. Grace marks in more than one paper will be permissible. Interse position of these candidates will be determined by their aggregate marks. In order, however, to maintain parity among the recipients of grace marks for the purpose of determining inter-se seniority the maximum number of the grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks. For example, if the maximum grace marks given is 10 and two other candidates need three and four grace marks each, they will also be given a total of ten marks each.

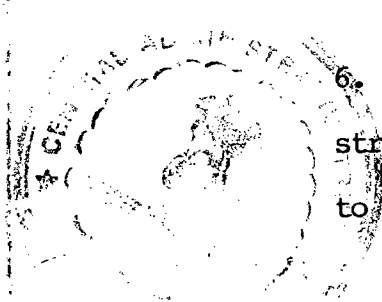
iv. Candidates who qualify according to the minimum

him adequate grace marks has resulted in forfeiting his chances of promotion that would have been otherwise his. In particular he submitted that one Amarnath who was subsequently impleaded herein, should have really been moved out and not given the slot to which he would have been otherwise eligible subject, however, to adequate grace marks being added.

4. We have heard the learned counsel Shri H. Basavaraj who appeared in support of the applicant and also the very ebullient standing counsel who says that we must place special premium on efficiency and merit and in this submission he was joined in by Dr. M.S. Nagaraja, learned counsel appearing for the impleading respondent Amarnath who maintains that the criterion enunciated in the circular by the Government, the condition precedent for declaring any person who had failed in the examination asks us if he was otherwise found suitable and if found suitable grace marks should then be awarded to bring him upto pass. He says that this essential aspect being agreed to put in operation before gracing can be done is conspicuously absent. In any view of the matter the benefit of granting extra marks to the applicant does not arise is his argument.

5. Having given our earnest consideration to the arguments on either side we think that this is a case in which the departmental authorities who are responsible for making recommendations in regard to promotions have failed to bear in mind the circular instructions on which both sides rely upon.

6. In this connection we invite attention to the circular instructions produced at Annexure F by the applicant dating back to 4.5.1981. We think it proper to reproduce the entire circular



and we would, however, like to emphasis the para 3 of the same.

"I am directed to refer to the letters noted in the margin on the above mentioned subject wherein relaxed standards for SC & ST candidates in qualifying confirmation and Departmental Promotion Examinations have been prescribed against the vacancies reserved for them.

2. The matter has been further examined by the P&T Board. It is observed that the basic objective in such cases is to decide whether SC & ST candidates who take departmental examinations are fit [at least 'not fit'] to hold the post for which they are competing rather than going only by their percentage of marks. Accordingly the following decisions have been taken:

i. No special action is called for where adequate number of SC/ST candidates qualify for the reserved posts.

ii. In examinations where the required number of candidates do not qualify even according to the relaxed standards, the cases of failed candidates should be reviewed on the basis of confidential reports, the overall performance in the examination etc. by a Committee of senior officers so as to assess their suitability/unsuitability. The committee will consist of the Head of the Circle and a Director of Postal Services/Telecom Director in the District, nominated by the Head of the Circle in respect of recruitment to Group 'C' posts. In the case of the Civil Wing, the concerned Superintending Engineer may be included in the Committee instead of a Director. As regards Group 'D' posts, the Committee will consist of the Director Incharge of the Region concerned and a senior Time Scale Officer as may be nominated by the Head of the circle. In the case of Civil Wing, the concerned S.E. and a Senior Time Scale Officer, nominated by the Head of the Circle, will form the Committee.

iii. In the case of candidates considered not unfit for promotion, grace marks should be added to bring them upto the qualifying standard. There will be no limit to giving grace marks to the candidates who are not otherwise unsuitable. Grace marks in more than one paper will be permissible. Interse position of these candidates will be determined by their aggregate marks. In order, however, to maintain parity among the recipients of grace marks for the purpose of determining inter-se seniority the maximum number of the grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks. For example, if the maximum grace marks given is 10 and two other candidates need three and four grace marks each, they will also be given a total of ten marks each.

iv. Candidates who qualify according to the minimum

percentage laid down for the examination will get seniority en block above all those who require grace marks, irrespective of the aggregate marks of two groups. In other words, a candidate having higher aggregate marks but requiring even one grace mark will be placed below one who has got lower aggregate marks but has secured minimum qualifying marks in each paper.

v. Results of those who qualify in normal course will not be withheld pending decision on SC/ST candidates who fail to qualify by securing the minimum number of qualifying marks in each paper. The result of all the candidates who need and are given grace marks will be declared as Supplementary result.

3. It is requested that the above instructions may be brought to the notice of all concerned and carefully followed."

7. We also notice that in the year 1992 the scheme under Annexure F have been superseded by another circular produced at Annexure G which enjoins adoption of a new scheme which appears to make a radical departure from the scheme adumbrated in the circular with which we are presently concerned. We need hardly mention that the circular instructions under Annexure G being prospective coming into effect as it does on the date of the circular dated 1.12.1992 will have no bearing on the controversy we are presently seized of.

8. Harking back to the circular at Annexure F which is presently on the anvil, it certainly constitutes a break from the usual run of examination at which grace marks are added to bring back to par candidates who are just on the border line. As a matter of fact as our experience goes the amount of grace marks to be given to a failed candidate is decided upon and fixed prior to the examination but circular Annexure F makes a discernible departure from such accepted norm. It fixed no minimum for gracing and if para 3 of the Circular is reckoned it becomes clear that grace marks could be given to a maximum limit so as to bring

M



a candidate upto the passing level. This aspect is emphasised by para 3 where it states "There will be no limit to giving grace marks to the candidates who are not otherwise unsuitable."

9. In the instant case the applicant who has failed to get the minimum marks only in one subject ie., Physics wherein he has secured only 12 as against the minimum of 33, if para 3 of Annexure F had been strictly followed with the sky being the limiting phenomena is adopted 21 grace marks should have been added.

10. At this stage learned Standing Counsel rises to submit that the whole notion of adding grace marks will be at 6s and 7s if a person obtained zero marks he is graced upto the maximum limit to bring him up to par would render the whole exercise totally ridiculous and ludicrous. We agree but, however, there is no escape from the circular which enjoins even such an exercise which logically speaking should be treated redundant as ad absurda but we are here helpless. As a matter of fact we notice from Annexure G which gives the reason why earlier instructions under Annexure F was aborted specially mentions that under the old practice even those who got zero could be given grace marks and made successful but that scheme was rightly treated as improper has since been given up. Therefore, the argument of the learned Standing Counsel is apparently taken note of by his own department who of course have realised the debacle a little late in the day but becoming wiser later will not assist the learned Standing Counsel to swing the balance by denying promotion to the applicant.

11. A plain construction of Rule 3 of the circular leaves nobody in doubt albeit the reservation which the learned Standing Counsel

has and gives expression to it even now, that a candidate belonging to the SC category who has taken the examination but has failed in the examination should be graced upto the maximum there being no limit provided he is found to be not otherwise unsuitable.

12. The intentment clearly appears that notwithstanding the failure in the examination if the examinee is otherwise suitable to attain the higher position with the addition of adequate grace marks as regards to which there is no ceiling a candidate can be brought upto par by adding enough marks to ensure acquisition of the minimum parity of marks. Upon adding such marks if such a candidate is found to deserve promotion, he could be suitably elevated. If this be the possible construction of the rule, it is obvious that the rule as such has not been brought into field in evaluation of the results of the examination and declaring the eligibility of the applicant for promotion. We notice that the applicant fell short of 21 marks in Physics paper and had he been granted 21 grace marks, he would have reached the minimum of 33 in which event the aggregate of his performance in all the four subjects would have totalled to 216 and he would then have ~~been~~ topped the list of SC candidates that of course with the help of the grace marks.

13. We have the proceedings of the HPC before us and we find that the committee had resolved to add grace marks of 10 that too in not more than two papers per candidate but subsequently they appear to have decided to give 8 marks in respect of paper 2, 10 in respect of paper 3 and 1 mark in respect of paper 4 adding in all to 19. This information is borne out from the



proceeding of the HPC produced by the respondents.

14. It becomes clear from the above that the procedure adopted by the HPC is not in conformity with rule 3 of the Circular at Annexure F. The committee could not have confined itself to a particular minima while adding grace marks in any subject. What they should have done is to add maximum grace marks to such of the candidate failing in the examination but found otherwise suitable for promotion. If this modality had been adopted and the applicant given 21 marks by which he had fallen short to reach the minimum in regard to paper 2 the applicant would have not merely passed the entire examination but as we have pointed out he would have been shown above all other candidates. The infraction committed by the Committee lies in not following the requirements of the Circular not only that, it has acted contrary to the circular instructions by fixing some kind of gracing of optimum of 10, 8 and 1 etc. which is in flagrant violation of Rule 3 of Circular at Annexure F. On this conclusion, we should have straightaway gone on to direct a denovo consideration of the applicant's claim for promotion but Dr. Nagaraja intervenes and submits that it is not a question of inflating the marks obtained by the applicant for that would arise only after he is found fit and suitable. Shri Basavaraja joins in and submits that in the objection statement filed on behalf of the department the suitability of the applicant has not been denied at all and not merely that the department has nowhere stated that the applicant was found to be unsuitable for promotion. We take it that such is the position and we ^{just} hold that there is no controversy about the suitability of the applicant for promotion. Therefore, the only question that remains to be examined is whether the

mechanism employed by the HPC in evaluating the result of the examination by addition of some grace marks is unreasonable and totally faulty and we hold it to be so.

15. In that view of the matter we think it appropriate to direct the HPC to redo the exercise of evaluating the claim of the applicant for promotion by adding 21 marks in paper 2 Physics to the 12 marks he has already scored in the examination and thereafter consider his fitment to the promotional vacancy. We may also mention that if there is any other SC candidate who should get any benefit by this direction the case of such candidate may also be considered. We make it clear that the benefit of this judgment will, however, enure only to the candidates who took the examination held on 10th and 11th November 1990 and not to others. We make it further clear that the question of suitability of the applicant for promotion is no longer in doubt and all that the committee will have to now do is to add the requisite number of grace marks and in consequence pass appropriate orders in the matter of promotion.

16. In the result, therefore, this application succeeds as indicated and in accordance with the directions issued herein the HPC will redo the exercise of reviewing the promotion of the applicant to the post of JTO in the light of the directions given. No costs. The reviewing operation will have to be done and concluded within 3 months from the date of receipt of a copy of this order.



Sd-
D76

MEMBER [A]

bsv

TRUE COPY

Sd-
11/2/94

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

Sd-
Rm

VICE-CHAIRMAN