

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 839/94 / 199.

g/m SEPT. 98
Date of Decision: _____

General Secretary Petitioner/s
Bombay Tel. Canteen Emp. Ass. & 2 ors.

Mr. P.A. Prabhakaran Advocate for the
Petitioner/s

V/s.

UOI Min. of Communication Respondent/s
and ors.

Mr. V S Masurkar Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member(A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*

R. G. Vaidyanatha
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESOT ROAD, MUMBAI 400001

O.A.No. 839/94

DATED; THIS 8 DAY OF SEPTEMBER, 1998

CORAM: Hon. Shri Justice R G Vaidyanatha, Vice Chairman
Hon. Shri D S Baweja, Member(A)

1. General Secretary
Bombay Telephone Canteen Employees
Association,
C/o. Prabhadevi Telephone Exchange C
Canteen, 1st floor, Dadar(W)
Mumbai 400028
2. S J Shetty, in his capacity
as General Secretary of the
Association and in Individual
capacity, working as Bearer,
a Group 'D' employee in
Ghatkopar Telephone Exchange
Departmental Canteen,
Maniklal Estate, L.B.S. Marg
Mumbai 400086 and
R/a. Laxman Keni Building
Room No.45, 3rd floor,
Suryaprakash Wadi, DNC Road
Datta Nagar,
Dombivli(E), Thane Dist.
3. N M Mogaveera
working as Bearer in
Cooperage Exchange
Departmental Canteen
M K Road, Mumbai 400021
R/a. Parvati Chawl, Room No.11,
Manpada Road, Saha Gaon,
Dombivli (E), Thane Dist.
(By Adv. Mr. P A Prabhakaran) ..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Communication
Department of Telecommunication
Sanchar Bhavan, Ashoka Road,
New Delhi
2. and through the Secretary,
Ministry of Personnel, Public
Grievances and Pension, North Block
New Delhi
3. Director of Canteens
Department of Personnel & Training
Lok Nayak Bhavan, 3rd floor,
Khan Market, New Delhi 110003



4. Chief General Manager
Mahanagar Telephone Nigam
Telephone House, V S Marg,
Dadar (W), Mumbai 400028.
(By Adv. Mr. V S Masurkar, Central
Govt. standing counsel)

..Respondents

ORDER
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[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. Applicant has also filed Miscellaneous Petition No. 285/97 for some interim order. By order dated 13.6.97 the said Miscellaneous Petition was ordered to be heard along with the main application. We have heard the learned counsel appearing for both sides, both regarding the O.A. and M.P.

2. The first applicant is the Union and the applicants 2 and 3 are members of the Union known as Bombay Telephone Canteen Employees Association. The grievance of the applicants is that as per the judgment of the Supreme Court the Canteen Employees came to be regularized as permanent Government employees. Therefore, it is stated that canteen employees have all the rights and privileges of the regular government servants. The department called for applications for the post of Phone Mechanics, but the members of the first applicant's association are not allowed to submit their applications for the said post. By way of amendment to the application it is stated that two members of the first applicant association viz., G V Poojary and S E M John were allowed to appear in the screening test, but subsequently they



were not appointed as Phone Mechanics. The action of the department in not allowing the employees to apply for the post of Phone Mechanic is illegal and contrary to the rules. Hence the applicants have filed this application saying that the canteen employees who belong to ~~this~~ ^D group be permitted to take the screening test for the post of Phone Mechanic and other consequential benefits.

3. The respondents contention is that the members of the first applicant association do not fit into the eligibility criteria for applying to the post of Phone Mechanic and therefore they were not allowed to submit their applications. It is stated that the canteen employees have no technical experience in the department of telecommunication and therefore they are not eligible to apply for the post of telephone mechanic. The respondents have therefore justified the rejection of the request of the canteen employees for permission to apply for the post of phone mechanic.

4. The applicants have filed M.P.No. 285/97 for a direction to the respondents to allow the two candidates Poojary and John to undergo training. Respondents have filed reply stating that these two candidates were allowed to undergo screening due to misrepresentation and since it was later found that they were not eligible to apply for the post they were not sent for training.

5. In the light of the arguments addressed before us and the pleadings, the points that fall for determination are

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- i) Whether the Group D canteen employees are entitled to apply for the post of Phone Mechanic at the relevant time ?
- ii) Whether the two candidates Poojary and John are to be permitted to undergo the training for being appointed as Phone Mechanics ?
- iii) What order ?

6. Admittedly the post of Phone Mechanic is a technical job. As per the then existing rules only officials who have some technical experience in the telecommunication department are eligible to apply to the post. The relevant rules are at page 12 of the reply of the respondents. As far as Phone Mechanic is concerned the employees who are eligible to apply are Linemen/ wiremen, regular mazdoor, casual mazdoors with temporary status, all Group D staff of Telecommunication engineering wing and Group D/casual labors working in temporary status in sections other than Telecom, such as Telegraph Traffic, Telecom, Civil Wing, Accounts etc. It is pointed out by the learned counsel that the cadres mentioned herein should also have some experience working in the telecom department. That means the mazdoors are also associated with laying telephone cables, doing manual work

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pertaining to telephone installation etc. The object is that those Group D employee who have some technical experience are eligible for applying to the post. As far as the group D employees of the Canteen are concerned they cannot have any technical experience in the telecom department. Therefore, if the department has confined the eligibility only to certain group D officials who have some technical experience we cannot say that classification is bad and the job should be thrown open to all Group D employees including the canteen staff.

7. Learned counsel for the applicant has argued that the group D employees of canteen have all rights of group D employees of other departments. It may be so. We are not concerned about their pay scale, other facilities like Leave etc., but we are concerned about their recruitment to technical jobs. If the rules provide for certain eligibility criteria it has some reasonable nexus to the object to be achieved. We cannot say that the criteria is bad in law.

8. Learned counsel for the applicant has taken up through all the pleadings and documents filed but we do not find any merit in the arguments that the Group D employees of the Canteen should have a right to apply for the post of telephone mechanic.

9. We must also bear in mind that we are concerned with the selection process in April or May 1994. It may be



subsequently in August, 1994 the department has taken a policy decision to allow all Group D employees to apply for all posts. That decision can be applied prospectively and cannot be applied retrospectively to the selection process which had taken place previously. As per the existing policy also at the relevant time Group D employees to the canteen were are not eligible to apply for the post of phone mechanic, but subsequently the department has liberalized the rules is no ground to interfere with the previous selection process. There was no stay order from the court. The previous selection process has already taken place and now we cannot set the clock back. We are also told that in view of the subsequent change of the policy some of the members of the first applicant association have appeared for the screening test in 1997. In these circumstances we do not find anything wrong as per the then policy in the department in not permitting the canteen employees to apply for the post of telephone mechanic. Point (i) is answered accordingly.

POINT No.(ii):

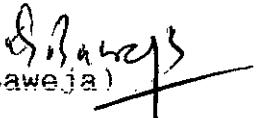
10. This point has arisen because of Miscellaneous Petition No. 285/97. It is true that the two employees Poojary and John were allowed to appear for the screening test and were not selected. The respondents have made it clear that this was because those two employees falsely

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misrepresented about their working in a technical department and therefore they were allowed to apply. The respondents have produced the applications of Poojary and John which are at pages 7 to 10 of the reply to the Miscellaneous Petition. In Poojary's application he has shown his designation as Mazdoor and the department is shown as Assistant Executive Engineer of Mandvi Telephone Exchange. He has not shown that he was a canteen worker at the relevant time. Similarly in John's application also he has shown his designation as Mazdoor in the office of the Assistant Engineer, Mandvi Telephone Exchange. He has also not disclosed that he was working in the canteen at the relevant time. Because of the wrong or false information in the application forms these two persons were allowed to appear in the screening test and subsequently it was noticed that they belonged to canteen department and not to technical department. Therefore their selection was stopped and they were not sent for training. Having regard to the facts and circumstances of the case we do not find any illegality in the action taken by the department in so far as these two persons are concerned. In view of our finding to Point (i), the canteen employees Group D were not permitted to apply by the department at the relevant time of the selection and therefore Poojary and John are not entitled to be selected as per the then policy. Point (ii) is answered accordingly.



11. In the result the Original Application and M.P.No. 285/97 are dismissed. No costs.


(D S Baweja)

Member (A)


(R G Vaidyanatha)

Vice Chairman

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