

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:675/94

DATE OF DECISION: 16th March 2000

Shri K.Vithal Applicant.

Shri G.K.Masand Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri S.S.Karkera for Shri P.M.Pradhan Advocate for
Respondents

CORAM

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

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

(1) To be referred to the Reporter or not? No.

(2) Whether it needs to be circulated to other Benches of the Tribunal? No.

(3) Library.

yes

S.L. Jain
(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 675/94

the 16th day of MARCH 2000

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

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

K.Vithal
Residing at
Quarter No.D-1-2,
P&T Colony,
Mulund (West),
Bombay.

...Applicant.

By Advocate Shri G.K.Masand.

V/s

1. Union of India through
Secretary in the Ministry
of Communication Department
of Telecom, Sanchar Bhavan,
Ashoka Road,
New Delhi.

2. Chief General Manager
Maharashtra Telecom Circle
G.P.O. Building, Bombay.

...Respondents

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

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 seeking the following reliefs:-

- (a) That this Hon'ble Tribunal will be pleased to
hold and declare that DPC proceedings resulting
in the issuing the impugned order dated 25.2.1994
are vitiated on account of bunching of vacancies
of the year 1990, 1991, 1992 and 1993 and holding
of consolidated selection in 1993 as if all those
vacancies had occurred in 1993.

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- (b) That this Hon'ble Tribunal will be further pleased to hold and declare that the DPC proceedings resulting in the issuing of the impugned order dated 25.2.1994 are also vitiated on account of unequals being treated as equals in as much as ACRs of the applicant written by officers of the level of SAG/JAG while applicant was working in Group-A from May 1987 to May 1989 and again from 4.3.1991 have been written by much lower level officers for assessing the comparative merits.
- (c) That this hon'ble Tribunal will be pleased to quash and set aside the impugned promotion order dated 25.2.1994.
- (d) That this Hon'ble Tribunal will be pleased to direct the respondents to hold separate selection for each year by restricting not only the field of eligibility but also zone of consideration and thereafter to prepare the panel of officers by comparison of ACRs of equals and in the case of officers like applicant whose ACRs are written by higher level officers, they should be graded by higher by one stage in accordance with the ratio of the judgement of the Full Bench of this Hon'ble Tribunal sitting at Hyderabad, in the case of S.S.Sambhu's V/s Union of India, reported in (1992) 19 ATC 571/ ATR 1993 (1) CAT 109.

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- (e) That costs of this application be awarded to the applicant and
- (f) That such other and further reliefs as are expedient be granted in favour of the applicant.

2. There is no dispute between the parties in respect of the fact that the applicant, who is a Schedule Caste candidate, was appointed as Postal Assistant on 18.1.1969. After qualifying Part I and Part II examination promoted as Junior Accountant in 1974, Senior Accountant in 1976 respectively, promoted as Accounts Officer in Class II Service in 1983 and Senior Accounts Officer Class II Service in 1987, he has worked as Assistant Chief Accounts Officer in Junior Time Scale in Indian Posts and Telegraphs Accounts and Finance Service Class I on 4.2.1991 and as Chief Accounts Officer since 5.2.1991, In Senior Time Scale of pay with a technical break of one day since 29.1.1992 continuously.

3. It is also not disputed that in 1987 while he was working in Group 'B' service, was sent on deputation to Jawaharlal Nehru Port Trust at Nhava Sheva as Senior Accounts Officer which is a Group 'A' post and the said deputation continued till May 1989, his ACRs for the said period were written by Senior Administrative Grade Level officer.

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4. Appointment to Group 'A' service is governed by Indian Post and Telegraph Accounts and Finance service Class I (Recruitment) Rules 1972 as amended in 1980, according to which three modes of appointment (a) Direct recruitment on the basis of competitive Examination held by UPSC (b) by promotion on the basis of selection by duly constituted D.P.C. and (c) by transfer on deputation from other services. The application relates to category (b) as stated above. The eligibility is three years service in Class II. The applicant does not come under zone of consideration for vacancies till 1986 to 1989. After 1989, no selections were held till 1992. The selection was held in 1993 and the panel does not contain the name of the applicant. In consequence to the said selection, promotions are ordered on 25.2.1994.

5. The said selection of 1993 is being challenged by the applicant on the following grounds:-

(1) The vacancies occurred in the year 1990, 1991 and 1992 are bunched and selection for each year's vacancy is not made separately resulting thereby

(a) The names of the officers, who were not even eligible for the vacancy of the year 1990 were considered,

Thus the zone of consideration was faulty.

(b) The ACRs which are taken into consideration were not of the relevant years, in which the officer became eligible for consideration and previous to that

Page -

- (c) The applicant's ACR for the year 1987 to 1989 were recorded by Senior Administrative Level Officer while the ACRs of other officers belonging to 'B' group were written by officers working in Senior Time Scale or even in Group 'B' post.
- (d) Thus, there has been a consideration of unequals violative of Article 14 of the Constitution of India.
- (e) The applicant being a Scheduled Caste candidate, the bench mark he has earned, he ought not to have ^{been} ignored.

6. The said challenge is based on the ground that he was promoted as Assistant Chief Accounts officer in Junior Time Scale in Indian Posts and Telegraph Accounts and Finance Service Class I on 4.2.1991 and as Chief Accounts Officer Since 5.2.1991 in Senior Time Scale of pay and is working continuously since then. The respondents alleged and rightly alleged that it was an Adhoc arrangement as there were no officers available who were approved by regular DPC and it was necessary to man the vacant Senior Time Scale Posts and therefore in order to carry on work smoothly regular Accounts Officers who had put in minimum of 8 years of regular service were appointed to officiate in Junior Time Scale and Senior Time Scale against the vacant posts on temporary and adhoc basis with a specific condition that such promotion would not be the base of any claim of the said Officer to regular promotion to the said post on which they were appointed and requested to work.

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7. There is dispute between the parties in respect of the fact that whether there exists vacancies for the year 1990, 1991 and 1992.

8. In rejoinder affidavit the applicant claims that in the year 1990 as many as 38 posts in Group 'A' were created vide No. 34-30/87 SE A dated 13.6.1990 by upgrading the existing posts in Group 'B', 54 vacancies occurred on account of retirement of the existing staff and 16 vacancies had fallen vacant on account of promotion of existing Group 'A' officers from Junior Time Scale to Senior Time Scale vide letter No.4-1/90 dated 14.2.1990. It is further alleged that 13 officers from Junior Time Scale were promoted to Senior Time Scale vide office Memorandum No.2/90 SEA April 1991. Thus the applicant claim 121 vacancies in the year 1990 and 1991. It is also alleged that 99 direct recruits were appointed during 1991-1992 and as 50% vacancies are to be filled by direct recruits, 50% by promotion, there would be corresponding 99 available posts for promotee officers to Group 'A' in these years.

9. Vide order dated 11.1.2000, after hearing the matter partly it was noticed that question of fact is involved, some details have already been provided in the pleadings as also in the chart submitted with reference to the judgement of Ernakulam Bench of CAT in OA 224/96, it is further ordered that factual details and expounding of calculations in the chart are needed, specially by way of statistics relating to sanctioned strength and how the adjustment made as shown in the chart. Respondents have filed the same by way of an affidavit.

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10. On perusal of the same we find that in the year 1989, 164 Temporary officers were holding the post at the beginning of the year, 82 appointments were made in the year, thus the total number of temporary officers comes to 246. In the year 1990 - 61, 1991 -44, 1992 - 18, 1993 - 4 officers retired. In 1990 -21, 1991 - 18, 1992 -25, 1993-25 promotee officers could be appointed against permanent post after adjustment in the year 1990, 1991, 1992, 1993 as the sanctioned strength was only of 40 promotee officers. In 1994 -76 Senior Time scale posts were down graded to Junior Time scale, one officer retired, five promotee officers could be appointed against permanent post. The sanctioned strength becomes 116. Taking the figure of 1993 the sanctioned strength was 40 while 59 promotee officers were working. Thus there is a truth in the contention of the respondents that there exists no vacancy till the year 1993.

11. About memo No.34-30/87 SEA dated 13.6.1990, the respondents explained and stated that the posts were already in existence and they are continued, no new posts came into existence. On perusal of the said memo, alongwith the list attached, we are satisfied with the contention of the respondents.

12. About retirement of 54 officers during 1990, even the respondents do admit that 61 officers retired during the same year.

13. On perusal of the notification No.4-2/90 SEA, it is true that officers belonging to Group 'A' in JTS cadre were ordered to officiate in STS cadre till further orders. None of the parties have placed on record that till what time the said order continued in existence. We cannot take into consideration the said vacancies in view of the UPSC letter dated 15.3.1990 as it was only an officiation. Even if the said vacancies are taken into consideration it does not affect the factual position that vacancy occurred in the year 1990 as 164 JTS cadre officers were working against sanctioned strength of 40 officers.

14. It is true that direct recruitment were made but as the situation is explained in the previous years up to 1989 there had been more recruitment by way of promotion from the promotee officers in the cadre of JTS. Hence the direct recruitment in the year 1991 - 92 is of no consequence.

15. Regarding the legal position that 50% to the cadre of JTS are to be appointed from direct recruits while remaining 50% are to be appointed from promotees, there is no dispute, as there was no sanctioned strength available for appointment amongst the promotees, question of convening DPC did not arise.

16. Due to want of vacancies for the JTS, from the promotees, D.P.C. was not convened, question of bunching, inclusion of ineligible officers in DPC of 1993 does not arise.

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17. There is no dispute between the parties that how the DPC is to be conducted except that the applicants who has worked in higher grade deserves a higher rank. For the said proposition the learned counsel for the applicant relied on the case of S.S. Sambhu V/s Union of India reported in 1992 (19) ATC 571 (FB) which has been considered by CAT Madras Bench in OA 441/95, by one of us { B.N.Bahadur, Member(A)} and it has been held that the said O.M. was not quashed but only it is mentioned that Government should consider about the need^{of} the change. They have not given any general ruling on the absolute issue. Hence the said authority does not help the applicants.

18. The learned counsel for the respondents relied on 1997(1) SC SLJ 329 Dr. Ramalu and another V/s Dr. Surya Prakash Rao and others^{and} argued that it is the decision of the Government whether to fill up the posts ^{or} not and it ^{is} not subject to challenge before the ^{Tribunal} Court. On persual of the said authority, the said proposition is not laid down but in view of the expected amendment in recruitment ^{rules} and conscious decision of the Government not to fill the posts, the said decision was upheld on the material placed before the Apex Court.

19. In OA 451/95 decided by CAT Madras Bench on 13.6.1998 and OA 224/94 decided by CAT Ernakulam bench on 13.7.1998 deals with the said DPC of the year 1993, the said question of fact ^{and} law were involved and decided are also dismissed.

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20. The post being selection post, the applicant was considered by D.P.C., as better grade officers were available, the applicant's name could not find place in the panel.

21. In view of the above discussion of questions involved in the present OA, we do not find any merit in the OA, it deserves to be dismissed and is dismissed accordingly with no order as to costs.

S. L. Jain
(S. L. Jain)
Member(J)

B. N. Bahadur

(B. N. Bahadur)
Member(A)

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