

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 930/1997
DATED THE 25TH DAY OF DEC, 2001

CORAM:HON'BLE SHRI S.R.ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER(J)

1. S.Sadasivan
2. Smt.Sobha T John
3. Smt.Pushpajia Bhaskaran ... Applicants

All working as Junior Telecom Officers in the Office of Divisional Engineer Phones MIDC Telephone Exchange, Dombivli (East) 421 203.

V/S₁

1. Union of India represented by
Chairman Telecom Commission,
Sanchar Bhavan, Ashoka road,
New Delhi - 110 001
2. Chief General Manager Telecom,
Maharashtra Telecom Circle,
Fountain Telecom Building,
Fort, Mumbai - 400 001.

By Advocate Shri V.S.Masurkar

ORDER)

Per Shri S.R.Adige, Vice Chairman(A)

The applicants impugn respondents order dated 20/8/97 (Annexure A-1) and seek a direction to respondents to fill up vacancies in the grade of TES Gr.'B' which arose prior to 22/7/96 and those which arose thereafter, strictly in accordance with the ration^m laid down in the TES (Group B) Recruitment Rules and the Hon. Supreme Court judgement dated 25/10/96 in SLP 2607/95 P.Sobhana & Ors V/s. P.Achuthan & Ors (Annexure A-4).

2. Applicants were recruited as JTOs in 1989 and were appointed on 23/7/90, vide order dated 1/8/91 (Annexure A-2). At that point of time, the TES (Group B) Recruitment Rules 1981 were in force whereby promotion, to the next grade of Sub Divisional

Engineer (SDE) required an eligibility qualification of five years of regular service as JTO. 66.6% of the vacancies in the grade of SDE (Rs.2000-3500) were to be filled up by promotion on the basis of departmental qualifying examination while the remaining 33% of the vacancies were to be filled by promotion on the basis of Departmental Competitive Examination.

3. By notification dated 22/2/96 (Annexure-III), the TES Gr.'B' Recruitment Rules were amended such that 75% vacancies in the vacancies of SDE were to be filled by promotion of JTO with three years regular service in the grade after dispensing with the departmental qualifying examination, while 25% of vacancies in the grade of SDE were to be filled by promotion of JTO with three years regular service in the grade on the basis of a departmental competitive examination.

4. In SLP No.2607/95 disposed of by the Hon. Supreme Court on 25/10/96 P.Sobhana V/s. P.Achutan & Ors, respondents gave an assurance to the Hon. Supreme Court that vacancies in the grade of SDE which had arisen prior to the amendment of the Recruitment Rules would be filled in accordance with the unamended Recruitment Rules and it is only the vacancies of SDE which arose after the amendment came into force which would be filled in accordance with the amended rules.

5. This matter had occasion to come before the CAT, Ernakulam Bench who in its order dated 1/5/98 in OA No.1497/96, K.C.Jose V/s. Union of India & Ors. and connected cases, directed that a single combined departmental examination comprising of both the qualifying and the competitive examination would be held for filling up vacancies in TES Gr.'B' of the Grade of SDE for

the years from 1992 onwards till 22/7/96 and vacancies arising upto 22/7/96 would be filled only with officials of JE/JTO's cadre who had qualified or may qualify themselves in the qualifying exam part of the single combined departmental exam for the SC/ST quota vacancy and 1/3rd quota earmarked for the competitive officers who had qualified themselves or may qualify themselves at the aforesaid competitive departmental examination would be so filled up. The posts earmarked for SC/ST in the promotional cadre of TES Gr.'B' were directed to be filled up properly with qualifying SC/ST officials from the feeder grade of JTO's/JEs based on the results of the examination which was directed to be held within six months from the date of receipt of copy of Tribunal's order.

6. Pursuant to the same respondents issued order dated 6/11/98 announcing arrangement for holding a departmental qualifying competitive examination in April 99 for promotion to TES Gr.'B'. In this order it was made clear that for the qualifying examination, candidates of SC/ST community only could apply, while for competitive examination, candidates of all communities could apply. Further more, all qualifying JTO's including TES Gr.'B' officials promoted against the vacancies for 1994-95, 95-96, 96-97 up to 22/7/96 were also made eligible for appearing in the competitive part of the departmental examination and would be entitled to seniority that was beneficial to them.

7. This order dated 6/11/98 was itself impugned by the applicants in an MA, in which their main grievance was that since they had not passed the qualifying exam, they could not appear

for the competitive exam and hence they must be allowed to appear for both qualifying and competitive examinations.

8. The contention of applicants was that since they had not yet passed the qualifying examination, they could not appear in the competitive examination and hence they must be allowed to appear for both the qualifying and competitive examinations.

9. By interim order dated 9/12/98 respondents had been directed to permit the applicants to appear for both the qualifying examination as well as competitive examination, ^{but} by subsequent order dated 16/4/99 after hearing both parties in detail, the interim order was vacated.

10. While doing so, the applicants' case was noted that as per 1981 Recruitment Rules 1/3 posts must be filled by competitive examination and 2/3 posts by promotion from candidates who had passed the qualifying examination. Since applicants had put in five years, they had a right to appear for both the qualifying and competitive examination and if they were successful they were entitled to be considered for promotion on the basis of their merit.

11. The respondents' contention ^{was also noted} that since there was a backlog of senior officials who had already passed the qualifying examination, Government had ~~restricted~~ ^{limited} the examination for general candidates only ~~for~~ ^{to} ~~the~~ ^{Competing} part of the examination (applicants are undeniably general category candidates), and therefore it was not ~~kept~~ open for general category candidates to appear in the ^{Qualifying} exam. Respondents further stand ^{also noted} that while holding the examination in terms of the CAT, Ernakulam Bench

order dated 1/5/98 (supra), the Ernakulam Bench ^{had} tried to strike a balance between the two sets of applicants who had agitated their claims before the Bench.

12. In its order dated 16/4/99, the Bench noted that CAT, Ernakulam Bench was concerned with candidates who had already passed in the qualifying examination and who had not yet got promotion and had therefore approached the Tribunal for a direction to Government to hold the second part namely the competitive examination. It was also noted that there was a lot of backlog of SC/ST vacancies and a prayer had been made that the Government must be directed to hold both the qualifying and competitive examination to enable the SC/ST candidates to pass and get promotion.

13. It was further noted that the Ernakulam Bench while striking a balance between the two sets of candidates, appears to have held that Government should hold ^{combined} ~~open~~ qualifying and competitive examination only for SC/ST candidates and the general candidates should not be allowed to appear for the qualifying part of the examination.

14. As the combined departmental examination was to be held only three days hence, on 20/4/99 and the Bench was informed that there were as many as 3700 officers who had already passed the qualifying examination and were waiting for the competitive examination, and like the applicants there were over 8000-10000 candidates who had still to appear for the qualifying as well as competitive examination, the interim direction to respondents to permit applicants to appear in the competitive examination was

withdrawn since they had not passed the qualifying examination. However, all these contentions of the applicants were left open on merit to be decided at the time of final hearing.

15. We have heard the first applicant Shri Sadashivan who argued the case in person and Shri V.S.Masurkar, for respondents.

16. *First Applicants* in the present OA Shri Sadashivan has contended that respondent had not adhered to their own assurance given to Supreme Court in Shobana's case which even otherwise ^{required} they are to do, in accordance to the Rulings of Rangaiya's case.

In this connection, reliance is placed on 1988 SCC (L&S) 105, Gonal Bhimappa V/s. State of Karnataka and Ors. as well as (1988) 3 JT 724, Union of India V/s. S.Vishwanath.

17. While it cannot be denied that the respondents are required to adhere strictly to the Recruitment Rules as well as the Court Rulings, we note that the Ernakulam Bench in its order dated 1/5/98 has itself observed that it cannot put the clock entirely back. As stated above, the Ernakulam Bench has sought to strike a balance between the conflicting claims that were advanced before it. While doing so it has taken note of Hon. Supreme Court's order in Shobana's case (supra), and have given certain directions, which has been sought to be implemented by respondents vide letter dated 6/11/98.

18. Nothing has been shown to us to establish the aforesaid order dated 1/5/98 has been stayed, quashed or set aside. The aforesaid order is binding upon us as a co-ordinate Division Bench.

19. During the course of hearing Shri Sadashivan contended that while persons junior to him were allowed to appear in the

qualifying examination, he was not allowed to do so. The case of one Shri V.M.Deolikar was pointed out in this connection but from a perusal of the record, it appears that Shri Deolikar is a schedule/tribe candidate whereas the applicant belongs to general category. No other case of a person junior to applicants who was allowed to appear in the qualifying examination, while applicants themselves were not cited before us.

20. In this connection, CAT, Bangalore Bench order dated 31/8/99 in OA 946/99 S.B.Sreenivasan V/s. Union of India & Ors in connected cases was also cited, but that order was focussed mainly on the number of vacancies which became available upto 22/7/96, and does not specifically deal with the grievance of the applicant, for ~~promotion~~ ^{permission} to appear in the qualifying part of the combined departmental examination which was to be held pursuant to the CAT, Ernakulam Bench order dated 1/5/98 in K.C.Jose's case (supra).

21. In the result, we find ourselves unable to interfere in this matter and the OA is dismissed. No costs.

Jain
(S.L.JAIN)
MEMBER(J)

Adige
(S.R.ADIGE)
VICE CHAIRMAN

abb

Central Administrative Tribunal
Principal Bench

RA No. 16 of 2002
In
O.A. No. 930 of 1997.

New Delhi, dated this the 1st May, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. S.L. JAIN, MEMBER (J)

In the matter of:

S. Sadashivan Vs.... UOI & Anr.

ORDER (By Circulation)

S.R. ADIGE, VC (A)

Perused RA No. 16/2002 seeking review of the Tribunal's order dated 25.1.2002 in OA No. 930/1997 S. Sadashivan Vs. UOI & Ors.

2. The main ground taken in the RA is that when OA No. 930/97 was heard, the contents of CAT Ernakulam Bench's order dated 27.4.2001 in OA No. 91/99 George Paul Vs. UOI could not be placed before the Bench and had it been placed, the Tribunal could not have dismissed the OA.

3. Review of a final order/decision of the Tribunal is governed by Section 22(3) (f) AT Act read with Order 47 Rule 1 CPC which provides that a final order/decision of the Tribunal may be reviewed.

i) when there is an error or mistake apparent on the face of record;

ii) when there is discovery of new and important matter or evidence which after the exercise of due diligence (emphasis supplied) was not within the petitioner's knowledge or could not be produced by him in court at the time the decree was passed or the order was made;

iii)any other sufficient reason, by which is meant an analogous reason.

4. Review petitioners themselves state in para V of the RA that they came to know of aforesaid order dated 27.2.2001 of CAT Ernakulam Bench in Swamy News dated February, 2002, that is after the Tribunal's order dated 25.1.2002 was passed.

5. No materials are forthcoming in the RA as to whether the Review Petitioners made any efforts to procure the aforementioned order dated 27.4.2001 before the OA came up for hearing to satisfy the "due diligence" Clause of Order 47 Rule 1 CPC quoted above. If the aforesaid order of CAT Ernakulam Bench dated 27.4.2001 came to applicants' notice for the first time only in Swamy's News of February, 2002, after the Tribunal had passed order on 25.1.2002 , manifestly it cannot be used to review the order.

6. Furthermore in D.Samuel Vs. Dr.J. Lazarns 1997(4) SCC 478 the Hon'ble Supreme Court has held that omission on the part of counsel to cite an authority of law does not amount to an error apparent on the face of the record so as to constitute a ground for reviewing a judgment.

7. In the result the RA fails and is dismissed.

SLJ
(S.L.Jain)
Member (J)
/ug/

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

*8/15
P.R.B.*