

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
1016/98
ORIGINAL APPLICATION NO. 108

Date of Decision: 29.11.2002

Smt. Maary John.

Applicant(s)

Shri K.B. Rajan.

Advocate for Applicants

Versus

Union of India & Others

Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN.
HON'BLE SMT. SHANTA SHAstry.

MEMBER (J)

MEMBER (A)

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

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(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.1016/98

THIS THE 29th DAY OF NOVEMBER, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

Smt. Mary John,
Junior Telecom Officer,
O/o SDOT, M.I.D.C. Telephone
Exchange, Tarapur,
Thane District 401 504. .. Applicant

By Advocate Shri K.B. Rajan.

Versus

1. Union of India through
Chairman, Telecom Commission,
Ganchar Bhavan, New Delhi-11.
2. Chief General Manager,
Telecom, 9th Floor, Fountain
Telecom Building II,
Maharashtra Telecom Circle,
Mumbai.
3. General Manager Telecom,
Telephone Exchange, Kala Talav,
Telecom District,
Kalyan (West). Thane Dist.
4. R. Ramakeishnan,
Sub-Divisional Engineer,
O.C.B. Installation,
Office of The General Manager
(Telecom Development)
New C.T.O. Building,
Mahatma Phule Chowk,
Kalyan, Thane District.
5. V.R. Alkari, SDE, OFC Installation,
O/o the General manager,
(Telecom Development,
New C.T.O. Building,
Mahatma Phule Chowk,
Kalyan, Thane District. .. Respondents

By Advocate Shri V.S. Masurkar for R1 to R3.

...2.

ORDER
Hon'ble Smt. Shanta Shastry, Member (A)

This application is against the Notification dated 20.5.1997 issued by the Chairman, Telecom Commission circulating all India gradation list of Junior Telecom Officers. The applicant has also impugned the letter dated 01.5.1995 of the Chief General Manager, Maharashtra Telecom Circle circulating the gradation list of Junior Telecom Officers and supplementary gradation list dated 30.6.1995. The applicant is a directly recruited JTO from Maharashtra Telecom Circle in response to an advertisement issued by Respondent No.2 on 25.02.1989 notifying 268 vacancies in September, 1989. On the basis of merit in educational qualification the applicant was sent for training in cross bar specialisation for 33 weeks at the Regional Telecom Training Centre vide memo dated 20.7.1990 by the Principal of the Regional Telecom Training Centre, Trivandrum. The Principal directed the applicant to join the place of posting on the next date of working after availing the joining time. Thereafter, Respondent No.2 ordered the posting vide letter dated 23.8.1990. The applicant joined duty on 27.7.1990, got appointed on the same day at Goa as per the applicant's statement.

2. The applicant has submitted further that again 425 vacancies of JTO in Maharashtra Telecom Centre were notified in March 1990. Selection orders/ training orders of two JTOs within the same recruitment year in

1990 namely Chandrakant Mahajan and Shri Jadhav Kisan L. who had applied on 22.3.1990 and 16.3.1990 were issued. However, they have been shown to have been recruited in the year 1989. Those recruited in 1990 were sent for training in 1991.

3. Another group of 135 candidates were recruited by Respondent No.3 through departmental examination held on 17th, 18th February, 1990 the results were declared on 27.12.1990.

4. Thereafter, All India gradation list of JTOS was issued on 20.5.1997. It is the grievance of the applicant that her seniority has been shown wrongly. She has been pushed down in the seniority below her junior.

5. It is the contention of the applicant that there were several discrepancies in the aforesaid all India gradation list. Promoted candidates of 1989 have been clubbed together along with the direct recruits of 1990 and departmental promotees who qualified in the examination of 1990. The applicant has cited the case of Shri Ramakrishnan who was directly recruited in 1990 but he is placed at Sl. No.11006 above the applicant, who is shown at Sl. No. 11837. Similarly Shri A.R. Alkari also appeared for the selection on 17th, 18th February, 1990 and was sent for training on 20.01.1991

is placed at Sl. No.11105 much above the applicant. According to the applicant this is in contravention of the departmental order of DOP&T issued by OM dated 03.7.1986 and 07.02.1986, according to which persons appointed as a result of an earlier selection ought to rank senior to those appointed as a result of subsequent selection and seniority has to be computed year-wise.

6. The applicant contends that direct recruits who occupied lower position to the applicant in the same select list of 1989 of Maharashtra Telecom Circle and who were sent later for training than the applicant have been placed above the applicant in the gradation list. For example Shri B.M. Jerome, JTO appointed on 10.9.1990 is at Sl. No.9921 and Shri Rampal Narendranath appointed on 21.12.1990 is at Sl. No.9859. The further grouse of the applicant is that the respondents have counted the post training marks obtained by the candidates trained in various technologies such as cross bar, transmission, coaxle, external plant line and cables, telegraphs etc. They were all subjected to different question paper and were trained at different training centre at different points of time, yet they are compared while determining their interse seniority.

7. The applicant also takes objection to the granting of earlier seniority to 19 SC and ST

departmental candidates, who had failed in the departmental examination in 1984, subsequently they were declared as qualified on 24.3.1993 by virtue of a review of the result by order dated 24.3.1999. They were conferred seniority below those whose results were declared under letter dated 30.5.1985. They were sent for training in 1993 and were appointed around June, 1994. They have been illegally, irregularly granted seniority above the applicant.

8. The applicant is further aggrieved that the Respondent No. 2 to 3 had issued officiating promotion order on the basis of the impugned gradation list ignoring the applicant's claim resulting in promoting junior of recruitment year 1990, though on adhoc basis. The applicant submits that he represented against the injustice done to him to the Chairman Telecom Commission on 15.5.1998.

9. The respondents at the out set raised the preliminary objection that the OA is for unsettling and challenging seniority list without making the persons likely to be affected as necessary parties. Therefore, the application is bad in law for not impleading necessary parties. Further, according to the respondents, their action is strictly according to law and rules. The respondents have not denied that the applicant is directly recruited as JTO in Maharashtra

Telecom Circle for the recruitment year 1989 and after completion of the training has been posted as JTO. The respondents have explained that even though the two officers namely Chandrakant Mahajan and Jadhav Kishan, though were recruited in the year 1990, they belong to the recruitment year 1989 and they have been correctly shown as recruited in the year 1989. The respondents have stated further that the All India gradation list was released on 20.5.1997, which is based on the circle gradation list. The seniority position of the applicant as well as the other officials is shown correctly on the basis of recruitment year. The candidates of the particular year have been arranged in the stipulated ratio of one departmental and two outside candidates in the order of merit as per marks obtained in the post training examination. The respondents state that no clubbing of 1989 and 1990 batches has been done. Seniority is based on recruitment year and the marks obtained in the training examination. Only batches of one recruitment year have been clubbed together.

9. The respondents submit that they have followed the procedure laid down in the then office of the Director General of P & T circular dated 10th July, 1980. According to these instructions, interse seniority of each category of recruits departmental and outsider shall be fixed in the order of marks obtained in the examination held during or at the end of the

theoretical training. Those who appear in the first attempt in one or all the papers and fail and pass in subsequent attempts will rank enbloc junior to all those in their respective category who pass in first attempt. The combined seniority of departmental candidates and outsider shall be determined by rotation of vacancies in accordance with the percentage reserved for them in the recruitment rules i.e. 65% for outsider and 35% for departmental candidates. The rotation of vacancies is done in a cycle. The respondents have defended their action of reviewing the results of SC/ST candidates and granting them seniority above the applicants stating that this is as per the orders on the subject and no irregularity is involved.

10. The respondents submit that local officiating promotion orders are being issued by SSA Head on the basis of the circle gradation list which is published on 01.5.1995. the applicant has not represented against the aforesaid gradation list within one month of its publication. Therefore, the grievance of the applicant is not tenable.

11. The applicant has represented to the Chairman, Telecom Commission on 15.5.1997 regarding the discrepancy in the provisional All India seniority list of all India JTO, whereas the applicant states that he represented to rectify the all India seniority as well

as the circle gradation list. The applicant has referred to para 32 (3) of the P & T Manual Volume IV and has represented accordingly. But para 32 (3) clearly says that subject to any special rules prescribed for any particular service, the seniority of the official in the cadre to which he belongs should be fixed. It shows that if special orders are available, this rule is not applicable and in this case the DOT orders for JTO cadre are applicable. The respondents, thus, justified their action.

12. The applicant has contended further repeating the arguments. The applicant submits that she has made the affected persons as necessary parties as the impugned gradation list does not create any vested right in favour of any candidate in the list so also the impugned seniority list prepared within the circle seniority list was not in the hands of any official but Respondent No.1 alone. The applicant adds further that in the impugned all India seniority list, the date of appointment of the applicant has been intentionally shown wrongly as 22.6.1990, whereas she was appointed on 27.3.1990. She apprehends that the seniority list altogether must be vitiated. The date of appointment of Shri Jerome and Rampal Narendranath are also shown wrongly as 24.6.91 and 24.2.1992 respectively, but ought to have been shown as 08.7.1991. Even the date of Shri V.R. Alkari is shown wrongly as 31.5.1991, it ought to have been 26.10.1991.

13. Later on the applicant has amended the OA making two JTOS as necessary parties namely Shri R. Ramakrishnan and Shri V.R. Alkari.

14. We have heard the learned counsel for the applicant as well as the respondents and have given our careful consideration to the arguments advanced. The objection raised by the respondents regarding not impleading the necessary parties has been partly removed by making two officers as necessary parties.

15. The main contention of the applicant is that since she was recruited in an earlier year, she cannot be clubbed with a person who has been recruited the next year for purpose of seniority. She ought to be shown senior to those who appeared for selection in a later year. It is also the case of the applicant that the respondents should not have clubbed the JTOS who were sent for different types of training at different centre and who appeared for different training examination, as the number of posts depended upon the discipline in which the persons were appointed. In this connection she referred to an OA No.488/96 filed by one Shri Sadashivan & Ors which was decided by this very Bench on 22.10.2001. The facts in that case are similar to the facts in the present case. The issue involved was also the same and the impugned orders were also the same. The name of the applicants in OA 488/96 appear in all

India gradation list in which the applicant's name in the present case appears. In the judgment and order in the aforesaid OA this Bench held that it was wrong on the part of the respondents to have clubbed the direct recruits of 1989 with direct recruits of 1990 and the promotees of 1990. This Bench had also commented on the policy of the respondents in counting the marks at the end of the training of different batches appearing in different courses on different dates. It was held that this was not tenable. No comments were made on the review of the results of the SC/ST candidates as they had not been made necessary parties, the same would apply in the present case. The present case is clearly covered by the OA No.488/96, therefore, the orders in that OA shall hold good in the present OA also. the same are reproduced below:

"In view of the discussion and the reasons recorded above, we are of the considered view that the interse seniority of candidates should be based on the date of actual appointment after successful completion of training from among the candidates who were recruited through the same examination. Candidates recruited through subsequent examination will have to be junior to those recruited earlier. Accordingly we set aside the impugned seniority list published vide letter dated 01.5.1995 and direct the respondents to recast the seniority in the light of the observations made above. The respondents shall ignore the 50 marks awarded for extra curricular activities while considering the marks obtained in the training course. This exercise shall be carried out within a period of three months from the date of receipt of a copy of this order."

15. There appears to be some discrepancy in regard to the dates of appointment of the applicant as well as the respondents No.4 and 5 while recasting the seniority list, the same shall be looked into. The OA is thus allowed. We do not order any costs.

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(SMT. SHANTA SHAstry)
MWMBWE (A)

PLJ/ML
(S.L. JAIN)
MEMBER (J)

Gajan