

In the Central Administrative Tribunal, Jaipur Bench,
Jaipur.

Date of Order: 24.11.92.

O.A.No. 593/90.

Chhotey Lal Meena

...Applicant.

Mr. M.S. Gupta

...Counsel for Applicant.

V.

J.O.I. & ors.

...Respondents.

Mr. U.D. Sharma

...Counsel for
Respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice Chairman
Hon'ble Mr. B.B. Mahajan, Adm. Member.

Per Hon'ble Mr. B.B. Mahajan:

Chhotey Lal Meena and 17 others Telephone
Inspectors and officials of other allied categories
have filed this application u/s 19 of the Administrative
Tribunals Act, 1985, praying for quashing of the
order dated 16.10.90 by which the Select List prepared
as a result of the examination held in 1984 for
appointment to the posts of J.T.Os. was cancelled and
for direction to provide training to them and post
them on the posts of Junior Telecommunications Officers
(JTOs) against the vacancies of the year 1984.

2. The applicants have stated that the posts of
Junior Engineers are filled by 65% from outside and
35% by promotion from amongst the departmental
candidates by following three methods :-

(1) 15% by promotion of departmental candidates
through a competitive examination;

2.

- (2) 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators through a competitive examination;
- (3) 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test.

3. The respondents held competitive examination for filling up of 15% and 10% vacancies mentioned above in the year 1984. The list of selected candidates out of both the quotas arranged in order of merit was circulated vide DG P & T letter dated 12.3.85 (Annex. A-II). Names of all the applicants are included in that select list. They were, however, not sent for training and given promotions against the posts of Junior Engineers and vide impugned order dated 16.10.90 they were informed that the result of the competitive examination had been cancelled. The applicants have stated that no reasons have been given for cancellation of the result and they had acquired the right to be appointed to the vacancies on the basis of their selection in the past. The respondents have admitted in their reply that the applicants' names were included in the said list of successful candidates as a result of the examination held in the year 1984 for the promotional quota and the same was also circulated. They have, however, stated that by the time the list of the successful candidates was published on 12.4.85, the Government of India had imposed, as an economy measure, ban on creation of posts as well as filling up of all the vacancies.

The Department of Telecommunications in July, 1986 issued instructions for cancellation of the result of this examination. However, somehow these instructions came to be conveyed only vide letter dated 16.10.90 (Annex. A-1). The learned counsel for the respondents stated that these were conveyed late inadvertently. In the reply, it was stated that further examination is proposed to be held in April, 1991. They have further stated that due to the ban imposed by the Govt. on filling up of vacancies effective from 1.1.84 and also due to large number of regular Junior Engineers who had been on deputation with the Railway Electrification Project Circle and who had become surplus there were on their return required to be accommodated. No recruitment against the 65% outside quota and 35% departmental quota could, therefore, be held before 1991. Department had, therefore, no alternative but to cancel the result of the said examination.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the respondents has stated that the Govt. had a right not to fill up any vacancies and moreover, in this case, no vacancies remained to be filled in view of the ban imposed by the Govt. ~~and~~ and the repatriation of the Junior Engineers who had been sent on deputation to the Railway Electrification Project Circle. It is, however, pertinent to mention that the respondents have not alleged any irregularity or any infirmities in the examination held in 1984. Their only plea is that there was no vacancy to be filled and, therefore,

this was a reason for the cancellation of the result. We are of the opinion that while the Govt. had, no doubt, the right to keep the vacancies unfilled as a measure of economy or any other valid reasons, this did not justify the cancellation of the result of the competitive examination in the absence of any irregularity in the conduct of the examination. The learned counsel for the respondents has referred to the judgment of the Hon'ble Supreme Court in *Shankarsan Dash v. Union of India* (1991 (2) SLR 779) where it has been held that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. It was added that unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. It was further added that it does not mean that the state has the licence of acting in an arbitrary manner and the decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.

6. The learned counsel for the applicant has referred to the judgment of the Principal Bench of the Tribunal in O.A. No. 349/87, *National Federation of Telecommunications Employees v. Union of India*, delivered on 15.1.90. In para 18 of the judgment, reference has been made to the judgment of Hon'ble Supreme Court in *Prem Parkash v. Union of India* (AIR 1984 SC 1831) in which it was observed by the Hon'ble Supreme Court that if selected

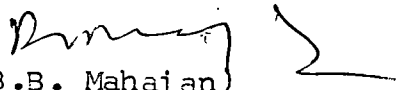
candidates are available from the previous list, there should either be no further recruitment until they are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. There should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. The learned counsel for the respondents has stated that in this judgment, Hon'ble Supreme Court was only interpreting the instructions issued by the Department of Personnel & Administrative Reforms on 8.2.82. It is, however, seen from the perusal of the judgment that the Hon'ble Supreme Court had cited the instructions dated 8.2.82 only as an additional reason in support of the view which they were inclined to take. In any case, it has not been shown that there was any provision in the Rules for the appointment of Junior Engineers in Telecommunications Department which limits the validity of the panel or that the instructions issued by the Department of Personnel and A.R. dated 8.2.82 are not applicable to the P&T Department. The learned counsel for the respondents has referred to the decision in Shankarsan Dash v. Union of India (supra) where they have observed, "Mr. Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen ~~in~~ to which the appellant and the other successful candidates should have been adjusted. We do not find any merit in this contention." He has sought to argue from


this that since fresh selection has now been made appointment cannot be made out of earlier Select List. This was, however, in the context of Indian Police Service to which the Shankarsan Dash's case (supra) pertains. There is a specific provision in Regulation 7(4) of All India Services (Appointment by Promotion) Regulations, 1955, that no appointment to the service by promotion shall be made after the meeting of the fresh committee to draw up a fresh list of suitable Officers under Regulation 5. No such corresponding provision has been shown to exist relating to the Junior Engineers in the Telecommunication Department. In the present case, therefore, the judgment in Prem Prakash's case (supra) will apply.

7. The learned counsel for the respondents has stated that a competitive examination had subsequently been held in 1991 and some candidates selected as a result of that examination had also been sent on training. We do not propose to interfere with those cases where the selected officials have already been deputed for training. However, in view of the above discussion, we allow the application partly and direct that all vacancies which remain to be filled and any vacancies that may arise in future must be filled by deputing the applicants for training and their subsequent appointment in the order of their merit in the Select List of the 1984 examination, and no further officer out of the subsequent Select List shall be sent for training or any further selection made until all those applicants who had been selected in 1984 are appointed. These directions will apply only to the appointments against the departmental quota of 25% referred at (1) and (2) in para 2 above.

7.

Parties to bear their own costs.


(B.B. Mahajan)
A.M.


(D.L. Mehta)
V.C.

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