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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.930/89

DATE OF JUDGEMENT: 5th July 1993

Between

J. Balaswamy .. Applicant

and

1. The Telecom District Manager
Guntur - 522050

2. The Director-General, Telecom,
(representing Union of India)
New Delhi-110001. .. Respondents

Counsel for the Applicant :: Mr C. Suryanarayana

Counsel for the Respondents :: Mr NV Ramana, CGSC

COPAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SHRI
T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act to declare that the applicant is entitled to be absorbed as a regular Telephone Operator according to his turn in the list of RTP-YOs irrespective of the caste or community, to which he belonged and pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

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3. The applicant belongs to 'Valmiki(Boya)' community. In the year 1979, the applicant applied for the post of Telephone Operator. He was considered under reserved community (Scheduled Tribe) and his position stood at Sr.No.32 in the recruitment register. The applicant was asked to submit the Caste Certificate in the prescribed proforma and the other original certificates. But the applicant did not submit immediately. Even though the said certificates were not produced by the applicant, he was deputed for training class which was to start from 1.6.1981, reminding the applicant to submit his original caste certificate. The applicant submitted his Caste Certificate on 2.7.1981 obtained from "Tahsildar, Piduguralla", Guntur District. The applicant is a native of Guntur District.

2. In the meantime, the respondents addressed a letter dated 10.7.1981, to the District Collector, Guntur to clarify whether the "Valmiki" (Boya) community is included in Scheduled Tribe in Guntur District. in the State of Andhra Pradesh. The Collector, Guntur, replied on 30.9.81 that the said caste ~~xxxxxx~~ 'Valmiki(Boya)' is a Backward Caste in the State except in the agency tracks where it is declared as "Scheduled Tribe". So, as the candidate was certified to be of denotified community, his selection to the post of Telephone Operator under the Category of Scheduled Tribe was cancelled. Thereupon, the applicant filed W.P.No.13854/1984, on the file of the High Court of AP seeking appropriate relief. After constitution of Central Administrative Tribunal, Bench in Hyderabad the said W.P.13854/1984 of the applicant was transferred to this Bench of Hyderabad and the same was numbered as TA 159/86. The said TA 159/86 was disposed by this Bench as per its Judgement dated 18.2.88 with certain directions to the respondents. (The directions ^{to} for the respondents in TA 159/86 will be referred in this Judgement at ^{the} appropriate stage).

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In view of the directions in the said TA.159/86, after considering all the facts pertaining to this OA and the related records and after considering the representation of the applicant dated 12.7.1988, 17.10.1988 at the time of verification, the competent authority deleted the name of the applicant from the selection list of telephone operators, as it was found that the applicant did not belong to the Schedule Tribe and did not come upto the mark in the open category for the post of telephone operator as the applicant did not secure the required percentage of marks for qualifying himself to the post of telephone operator. In view of the deletion of his name from the selection list for telephone operators, the applicant had filed the present OA for the relief(s) as already indicated above.

5. The respondents have filed counter opposing this OA.

6. In the counter filed by the respondents, it is maintained that the applicant does not belong to Scheduled Tribe community and that the percentage of marks secured by various candidates selected were 81.2% and above 80.2% in the open category and as the applicant had obtained only 51.4% including bonus marks, which is far below 802%, that the applicant's name was rightly deleted from the selected list of telephone operator for the 1979 IInd half-year.

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7. in detail
We have heard Mr C.Suryanarayana, Counsel
for the applicant and Mr NV Ramana, Standing Counsel for
the respondents.

8. ~~already~~
We had referred to the filing of the WP 13854/1984 by the
applicant in the High Court of AP, seeking appropriate
relief as the name of the applicant was deleted from the
selected list of candidates for recruitment to the post
of telephone operators for the IInd half year of 1979.
As already pointed out, the said WP 13854/1984 was transferred
to this Tribunal and numbered as TA 159/86 and the TA was
disposed as per the Judgement of this Tribunal dated 18.2.88
with directions as here under:

"The up-shot of whole discussion therefore, is
that this TA. Writ Petition succeeds.
Accordingly, we quash the impugned order
of cancellation dated 28.11.81 (Annexure XI)
and direct that the respondents shall re-consider
the whole position treating their letter dated
31.8.81 (Annexure VIII) as valid and binding
unless of course, it is found that the petition
does not in fact, belong to a scheduled tribe
and that he is not otherwise eligible for
selection on his own merit. Even if he does not
happen to belong to a scheduled tribe, the
respondents shall also consider whether he is
eligible against the reserved vacancy or other-
wise as belonging to a denotified tribe as per
earlier certificate of the Tahsildar
dated 15.5.76. The respondents shall afford
an opportunity to the petitioner to place all
facts before them and he will be associated
in the whole process of verification, etc.
He be also shown the marks obtained by various
candidates in the merit list prepared for
absorption of SDTO as regular TOs.

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9. One of the main contentions advanced on behalf of the applicant is that the Valmiki(Boya) caste is a Scheduled Caste and, as such, the applicant has got a right for continuation of his name in the select list for the post of Telephone operators, pertaining to the IInd half year 1979. The Brochure on Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 shows that the 'Valmiki' caste comes under Scheduled Tribe in Agency Tracks only and in rest of the AP it is treated as Backward Caste. In view of this position, it is not open for the applicant to contend that he comes under ST and that, his name has to be continued in the select list for the post of telephone operators for the IInd half-year 1979 against the vacancies meant for scheduled Tribe.

10. After having failed in his attempt to substantiate his contention that the applicant belongs to Scheduled Caste, the learned counsel appearing for the applicant maintained as the name of the applicant finds place in the merit list for selection to the post of telephone operators in the year 1979, that the applicant's name has to be continued as Telephone Operator. The posts of Telephone operators had been filled up in the year 1979 on the basis of their marks in the S.S.L.C Persons who had secured highest marks have only been selected for the posts of Telephone operator for the vacancies of the year 1979. In order to find out, whether the applicant had secured requisite marks for becoming eligible for selection to the post

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of telephone operators against the OC quota, we verified the marks register wherein the marks obtained by various candidates ^{who} were selected for the post of regular telephone operators ^{are entered.} The last candidate, who was selected for regular Telephone operator had secured 80.2% whereas, the applicant had obtained only 51.4% including the bonus marks. So, as could be seen, the applicant absolutely has no chance for selection in the quota meant for OC as he had not qualified himself for securing the requisite marks. So, as the applicant is not eligible for appointment to the post of telephone operator, the contention of the learned counsel for applicant, <

that the applicant's name should find place in the select list cannot at all be accepted.

11. Next, it is contended by the learned counsel for the applicant that the respondents had not made available original mark lists of all the candidates, who appeared for the regularisation of the Telephone Operators and hence, no reliance can be placed on the register produced by the respondents wherein, the marks of the candidates had been entered. It has to be noted that the register produced before the Bench is maintained in the marks regular course of performing the official acts of the respondents. There is every presumption that the official acts were done correctly and regularly. So, that being the position, high evidentiary value has got to be given to the entries made in the said register, with regard to the names of the applicants and the marks secured by them

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including the applicant herein. So, when the respondents have produced satisfactory evidence before this Tribunal to show that the applicant had not obtained requisite number of marks for becoming eligible to be considered as regular Telephone operator against the OC quota ← and as it is the contention of the applicant → that the selected candidates had not obtained the required eligibility for being appointed as regular Telephone operator on the basis of their marks obtained in the SSLC examination, heavy burden is cast on the applicant to ~~prove~~ prove his → contention. The applicant could have taken steps to summon the relevant records containing the marks of those candidates who were selected from the respective schools where they had studied. But, no such steps had been taken by the applicant. So, on the bare contention advanced on behalf of the applicant that the selected candidates had not secured the required ^{number} of ~~marks~~ marks in the SSLC examination as shown in the register produced by the respondents, cannot at all be accepted by this Tribunal. Besides, nowhere in the OA it is pleaded that by submitting ^{marks} bogus/certificates that the candidates got selected themselves by ~~pay~~ playing fraud on the respondents. In the absence of any such plea in the OA, it is not open for the applicant to contend that the candidates selected under the OC category did not acquire the required marks.

12. This Tribunal, while dismissing the TA 159/86 had also directed the respondents as follows:

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.....the respondents shall also consider whether he is eligible against the reserved vacancy or otherwise as belonging to a denotified tribe as per earlier certificate of the Tahsildhar dated 15.5.76."....."

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In view of the said direction, it is contended that the applicant is liable to be selected to the post of ~~xxxxxx~~regular Telephone operator in the vacancy meant for denotified tribe. For de-notified tribes, absolutely no reservations had been made. As already pointed out, as the applicant does not belong to reserved community, he has to come out successfully only in the quota meant for OC. Hence, the contention of the learned counsel for applicant cannot be accepted.

13. It is also the contention of the applicant's counsel, that as the applicant was a short-duty telephone operator as on 29.11.80, the date on which the reserved candidates training scheme was introduced and that, short-duty telephone operators get preference for inclusion in the reserved trained candidates list and as the applicant's name was included in the trained reserved candidates list, that the applicant is liable to be absorbed against any future vacancies. The learned counsel for the applicant relied on the following ^{directions} of the Judgement in TA 159/86.

"Till fresh orders are passed on way or other by the respondents, the petitioner shall remain on the select list and his services should be utilised as short duty Telephone Operator if such ~~the~~ scheme still exists or he be placed in the standing pool of trained reserved candidates for Telephone operators as per the letter dated 29.11.80 issued by DG P&T No.207/66/80-STN, if the same is in vogue. The Petitioner shall also be entitled to the payment of stipend admissible during the training period."

^{only}
The above order is an interim direction only to the respondents ^{pending passing of final orders} ~~the main question that is~~ to be decided in this OA is whether the applicant had the required eligibility to be

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selected and appointed as regular Telephone operator for the vacancies in the year 1979 against the reserved quota, and in any event, if the applicant was not eligible under reserved quota, whether he had the eligibility to be considered against the OC quota. We had already held that the applicant neither belonged to reserved community for being considered against the reserved quota nor he had acquired the eligibility to be considered against the OC quota on the basis of his marks secured by him in the SSLC examination and on the basis of bonus marks added to his SSLC marks. So the interim order referred to by the counsel for the applicant does not advance the case of the applicant in any way.

14. It is finally contended on behalf of the applicant that an additional reserve list of candidates equal in number to 50% of the number of candidates in the main select list had not been drawn up as per instructions of the DG P&T in his memo dated 30.10.1980 and thus, the applicant is deprived of an opportunity to be absorbed in the regular vacancy of Telephone Operator in his turn after the candidates in the main list had been absorbed and so, the OA is liable to be allowed. It is contended by the respondents that the additional reserve list also had been drawn as per the instructions of the DG P&T Memo dated 30.10.1980 and that, the applicant ^{did} ~~does~~ not come upto the mark even in the reserved additional list who ~~was~~ are eligible to be considered for regular telephone operators. Even though the said reserved list said to have been prepared by the respondents is not placed before us, in view of the specific directions given in TA 159/86, this Tribunal need not go beyond the said directions. The contentions of the applicant have got to be limited only with

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regard to the issues that are to be decided as directed in the earlier ~~xxx~~ TA.159/86 on the file of this Tribunal. It is not open for the applicant to raise issues in this OA other than those ^{to be decided} ~~pointed out~~ ^{we} in TA.159/86. Some are not prepared to go into the merit of the plea namely the applicant's name finding ^a place in the additional reserved list, and as a consequence the applicant having a right for appointment to the post of Telephone operator. Absolutely, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed with no order as to costs.

(T. CHANDRASEKHARA REDDY)
Member (Judl.)

(A.B. GORTHY)
Member (Admn.)

Dated: 5 Jul 1993

Deputy Registrar (J)

To

1. The Telecom District Manager, Guntur-050.
2. The Director-General, Telecom, Union of India, New Delhi-1.
mvl/sd
3. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
4. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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10th July
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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY,
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 5 - 7 - 1993

~~ORDER~~ JUDGMENT:

M.A. / R.A. / C.A. No.

in

O.A. No.

930/89

T.A. No.

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

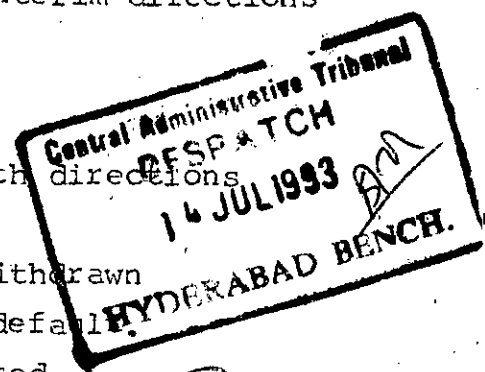
Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected / Ordered

No order as to costs.



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