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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH : AT
HYDERABAD

O.A.No.110 OF 1995.

Dated:21-1-1998

Between:

1. N. Rama Mohan Rao
2. P.V.S. Satyanarayana
3. R. Venkateswarlu
4. D. Rama Mohan Rao

.. Applicants

and

1. The Chief General Manager, Telecommunications, Nampally Station Road, Hyderabad.
2. The Director General, Department of Tele-communication, New Delhi.
3. The General Manager, Telecom District, Vijayawada.

.. Respondents

COUNSEL FOR THE APPLICANTS : Mr.K.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS : Mr.N.R.Devaraj

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN)

HON'BLE SRI K.B.S.JAI PARAMESHWAR, MEMBER(ADMN)

: J U D G E M E N T :

ORAL ORDER(PER HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN))

Heard Sri K.Venkateswara Rao and Sri N.R.Devaraj for the parties.

2. There are four applications in this OA. They are working as Phone Inspectors under Respondent no.3.

3. The Department of Telecommunications issued a Circular No. DOT.27-2-94-TE-II, dated 18-4-1994 (Annexure A.2) earmarking 35% quota of posts of JTOs for PIs/AEAs/WOs/TAs under two headings. The two headings are as below:

(a) The PIs/AEAs/WOs/TAs who held qualifications prescribed for outsiders for recruitment to the cadre of JTOs and have completed five years of regular service in the cadre of PIs/AEAs/WOs/TAs would be treated as a Walk-in group and would be sent for JTO training.

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(b) The remaining vacancies will be filled by the PIs/AEAs/WOs/TAs through a qualifying examination irrespective of their length of service.

The officials belonging to (a) above if they have put in five years of service they are treated as Walk-in group and are sent for JTO training. Those who have put in less than five years service will be sent for JTO training if they qualify in the qualifying examination.

4. The Circular dated 18-4-1994 was further revised by Circular dt 23-5-1994(Annexure A.3) which reads as under:

In continuation of this office letter of even number dated 18-4-1994 on the above subject, it has been decided that the qualifying examination for promotion to the cadre of JTOs will be a qualifying screening test hereafter. The syllabus and model question paper for this qualifying screening test will be finalised and sent to all concerned by the Training Cell of the Directorate.

It is stated that the qualifying examination as mentioned in para (b) of the Circular dated 18-4-1994 is by a screening test. Thereafter, it is also stated that the syllabus and model question paper for this qualifying screening test will be finalised and will be sent to all concerned by the Training Centre of the Directorate.

5. Thus there were four categories for whom the 35% quota of the JTO vacancies was earmarked. However, that Circular was further revised by the DOT Circular No.27-2-/93-TE-II, dt 31-12-1994(Annexure-1). By this Circular the post of TTA(Telecom Technical Assistant) were also included for promotion in 35% quota in addition to the four categories already included.

6. This OA is filed to set aside the DOT Circular No.27-2/93-TE.II dt 31-12-1994(Annexure-1) by holding the same as arbitrary and for a consequential direction to the effect that only Phone Inspectors /Transmission Assistants/Auto Exchange Assistants(AEAs)/Wireless Operators are exclusively entitled for 35% of posts for promotion to the cadre

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ef Junior Telecем Officers through qualifying screening test and for deletion of the TTAs from the impugned circular.

7. The main contention of the applicants in this OA is that by increasing the categories from 4-to 5 by the impugned Circular dated 31-12-1994 the chances of PIs/TAs/AEAs/WOs for promotion to the post of JTOs in 35% quota earmarked to them has been reduced. Hence, that circular has been issued to detriment of the four categories earlier indicated in that Circular dated 18-4-1994 and hence this Circular has to be set aside.

8. The Learned Counsel for the applicants also submitted that they are not questioning the screening test prescribed for JTOs even though in the first Circular dated 18-4-1994 provision exists for Walk-in group with five years service without screening.

9. A reply has been filed in this OA. The main submission of the respondents in this OA is that the above contention was examined by the various Benches of this Tribunal viz., Principal Bench, Ernakulam Bench and this Bench and held that the impugned Circular cannot be challenged. There is no arbitrariness in issuing the impugned Circular. The Government has got full powers to revise the promotion pattern considering stagnation in the various cadres. AS TTAs are a newly re-structured category they have to be given promotional chance to the post of JTOs. If they are not included in the 35% quota earmarked for PIs/AEAs/WOs/TAs, they should be shown in 15% quota earmarked for other categories of Direct recruitment. That will also be challenged as that 15% will be reduced. Hence, the DCT has decided that it ^{is} ~~was~~ preferable to include them along with the PIs/AEAs/WOs/TAs as duties of this category of TTAs are being of similar nature.

10. We considered the contentions raised by both the sides. At the outset it has to be held that all these Circulars viz., Circular dated 18-4-1994, 23-5-1994, 28-12-1994 and the impugned Circular, dated 31-12-1994 are only Departmental Circulars and these Circulars

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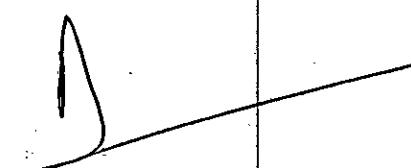
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are not issued under statutory provisions. When a Competent Authority had got authority to revise promotion pattern and issue Circular to that effect, the challenge to these Circulars cannot be held as arbitrary unless it has been proved conclusively that it has been issued with malafide intentions. Only if a revision is made by issuing a Circular against statutory provision framed under Article 309 of the Constitution, then only such Circular can be challenged. Circulars which are issued under the statutory provisions by Competent Authority is not open to challenge unless it is proved that such Circulars are contrary to the Constitutional safe-guard. In this connection, we would like to quote that a Government employee cannot legally enforce his right by challenging a guideline issued by the Government, - (1994 SCC L&S 230) (UNION OF INDIA Vs SL.ABBAS). In view of the above it is to be held that the challenge to the impugned Circular is not called for.

11. Further, we do not see any malafide intention in issuing the impugned Circular dated 31-12-1994. The cadre of TTAs was formed while restructuring the cadre. The TTAs cannot be allowed to continue without any promotional opportunities. They have to be clubbed along with some other similar categories for promotion to higher grades; in the present case to the post of JTOs. If they are clubbed in the 15% quota of direct recruits then those employees will be put to much severe disadvantage compared to employees whose quota is higher than 15% viz., 35%. Hence, the impugned circular dated 31-12-1994 was issued in our opinion with care considering the above view point. Further, there is nothing brought on record to show that the said Circular was issued with malafide intention on the part of the respondents, to reduce the promotional chances of PIs/AEAs/WOs/TAs. PI's cadre is a dying cadre as informed by the Department. Hence adding TTAs to that group may not cause much harm as in any case PIs category will be ~~washed~~ washed out in due course. Hence we do not see any reasons to set aside that Circular.

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12. Further this Circular was considered by other Benches of the Tribunal, viz., Principal Bench, Ernakulam Bench and this Bench. From the reading of these Judgements it can be inferred, that other Benches also have not favourably considered the challenge. As a matter of fact, the Judgement issued by this Tribunal in OA.no.649 of 1995 decided on 30-4-1996 upholds this Circular. Ernakulam Bench had held that it is a policy decision and hence cannot be interfered by the Tribunals.

13. In view of what is stated above, we feel that no case has been made out by the applicant for setting aside the impugned Order dated 31-12-1994.

14. The OA, hence, has to be dismissed for the aforesaid reasons. Accordingly, it is dismissed. No costs.

B.S.JAI PARAMESHWAR
(B.S.JAI PARAMESHWAR)

MEMBER (JUDL)

21.1.98

R.RANGARAJAN
(R.RANGARAJAN)

MEMBER (ADMN)

DATED: JANUARY 21, 1998

Dictated in Open Court

D.R.
D.R.

OA.110/95

Copy to:-

1. The Chief General Manager, Telecommunications, Nampally Station Road, Hyderabad.
2. The Director General, Department of Telecommunication, New Delhi.
3. The General Manager, Telecom District, Vijayawada.
4. One copy to Mr. K.Venkateswara Rao, Advocate, CAT., Hyd.

6. One copy to D.R.(A), CAT., Hyd.

7. One duplicate copy.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. DAI PARAMESHWAR :
M(J)

DATED: 21/1/98

ORDER/JUDGMENT

M.A./R.A./C.H.NO.

in
D.A.NO. 110/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

II COURT

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