

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.313/95 +
O.A.818/96.

Dt. of Decision : -04-98.

C.V.Ratnam

.. Applicant in both
the OAs.

Vs

1. The Chairman,
Telecom Commission,
Dept. of Telecommunications,
Sanchar Bhavan,
20, Ashoka Road, New Delhi-1.
2. The Chief General Manager,
Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad.
3. The General Manager,
Telecom District,
Suryalok Complex, Gunfoundry, Rs
Hyderabad-3.



The Chief General Manager,
Telecommunications, A.P.Circle,
Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad.

.. Respondents in
O.A.No.313/95.

.. Respondent in
OA.818/96.

Counsel for the applicant : Mr.V.Jagapathi

Counsel for the respondents : Mr.V.Bhimanna, Addl.CGSC.
in OA.313/95.

Mr.V.Vinod Kumar, Addl.CGSC.
in OA.818/96.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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8. From the above prayers it is evident that the prayers of the applicant in the OAs are that he should be considered for the post of JTO against the ex-servicemen quota in accordance with ^{the} rules as ^{the} he possess the certificate of graduation issued by Army. If ^{he} comes up succesful in the examination ~~he~~ should be appointed against the Ex-servicemen quota.

9. The respondents have filed a reply. The applicant cannot appear for the post of JTO against ex-serviceman quota as he had already been appointed as Technician against the ex-servicemen quota. Hence he cannot once again appear for the JTO examination against the ex-servicemen quota, in view of the Govt. of India Dept. of Per. & Trg., O.M.No.36034/ 27/84-Estt.(SCT), dt. the 2nd May, 1985 and No.36034/21/87-Estt.(SCT), dt. the 7th Nov. 1989. It is also stated that the applicant had been appointed substantially in the cadre of Technician w.e.f., 1-9-92 and hence he is ineligible for consideration for the post of JTO against ex-servicemen quota once again. It is further added that the applicant is not possessing the necessary minimum educational qualification for permitting him to appear for the JTO selection.

10. Before going into the various contentions raised by the applicant it is to be seen whether the applicant can appear for the selection of JTO against ex-servicemen quota when he had already been posted as Technician against ex-servicemen quota. The DoP&T/^{letter} dated 2-5-¹⁹85 and 7-11-89 referred to above ^{are} is very relevant to this issue. This letter reads as follows:-

"(5) Relaxation admissible only for the first civil employment.- It has been decided that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as

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4. The applicant was issued with a Hall Ticket No.4981 to appear for the written test scheduled on 26th & 27th June,1993 for selection to the post of JTO. He appeared for the written test. Only two ex-servicemen were reported to have been selected on the basis of the selection and it is also stated that these two candidates were also selected as they passed the examination in the open category based on their merits.

5. The applicant again applied for the post of JTO recruitment vacancies for the year 1993. The examination was conducted on 13/14-7-96. As per the interim order passed in OA.313/95, the applicant was permitted to appear for the 1993 recruitment examination conducted on 13/14-7-96 with Hall Ticket No.APT/ 2966/93. The applicant did not qualify in this examination also. The case of the applicant earlier to issue of the Hall Ticket for the year 1993 examination was rejected by the order No.TA/RE/3-3/94 dt.21-6-96 as "not possessing requisite educational qualifications".

6. OA.313/95 was filed praying for a direction to the respondents to appoint the applicant to the post of JTO against Ex-servicemen category by holding that non allotting the vacancies to ex-servicemen category is arbitrary, discriminatory and violative of Article 14 & 16 of the Constitution of India and contrary to Rules issued by the Govt. of India in notification No.15012/8/82/Estt(D) dt. 12-2-86.

7. OA.818/96 ^{is} was filed praying for a direction to the respondents to consider the applicant for the selection to the post of JTO by holding the order No.TA/RE/3-3/94 dt.21-6-96, issued by the respondent is arbitrary, unjust and illegal.

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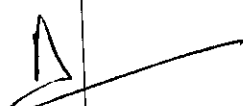
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ceased to get the benefits of an ex-serviceman for re-employment as their services cannot be terminated without following the rules in CCS(CCA) Rules. Their rights under Article 311 of the Constitution has been protected. Hence only the temporary/adhoc employees can apply for re-employment under the ex-serviceman quota even if they have been employed earlier against the ex-serviceman quota in temporary/adhoc capacity to protect their interest.

12. The applicant in this OA when applied for the post of JTO in response to the advertisement in Feb. 1993, was not posted substantially as Technician. Orders posting him substantially as Technician was issued only on 20-2-96 with retrospective effect from 1-9-92. In Feb. 1993 the applicant cannot be under the impression that he will be substantially appointed as Technician with back date. At that period of time he has to be considered as a temporary employee even though he was substantially appointed as Technician from 1-9-92 by order dated 20-2-96.

13. The examination for the JTO vacancies for the recruitment year 1993 was held on 13/14-7-96. At that time the applicant was already confirmed substantially as Technician by order dated 20-2-96. Hence, the applicant cannot be ignorant of his substantial appointment as Technician w.e.f., 1-9-92. Hence if his candidature is rejected in view of the letter of the DoP&T letter dt. 2-5-85 and 7-11-89 for that examination, the same cannot be held as arbitrary or irregular. From that angle the OA.818/96 is liable to be rejected as the applicant cannot sit for JTO examination against the ex-serviceman quota for the second time.

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an ex-serviceman for his re-employment, his ex-serviceman status for the purpose of reemployment in Government ceases. On his joining the Civil employment, he is deemed to be a civil employee and will be entitled to only such of the benefits like relaxation of age, etc., as admissible to Civil employees in the normal course in accordance with the existing instructions in this regard, subject to other conditions governing the grant of such benefits.

The above provisions shall not apply to those Ex-servicemen who have been re-employed by Private Companies/Autonomous Bodies/Public Sector Undertakings/Government Offices on casual/contract /temporary/adhoc basis and who can be removed from such service at any time by their employer concerned".

11. From the above letter it is clear that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-serviceman for his re-employment, his ex-serviceman status for the purpose of re-employment in Government ceases. But the ex-serviceman who is working in temporary/adhoc basis even if posted as such against the ex-serviceman quota can avail the benefits given to him as an ex-serviceman for his re-employment, till such time they are posted substantially ^{and} regularly. The above concession for temporary/adhoc ex-serviceman in the Civil side has been given as they can be removed from such service at any time by their employer concerned. A temporary employee can be removed from service with one month notice in accordance with the Temporary Service Rules. Similarly, the adhoc employee can also be terminated from service in accordance with the terms and conditions of appointment order. As an ex-serviceman employed in civil side in temporary/adhoc capacity is liable to be terminated with short notice or without notice, concession has been given to such ex-serviceman posted in the civil side on temporary and adhoc basis to apply for re-employment under the benefits given to an ex-serviceman. But an ex-serviceman substantially and regularly appointed

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direct recruitees is fixed between 19 to 27 years as on 1-7-92. But it is relaxable for 5 years for SC/ST candidates and for other certain categories like ex-serviceman, displaced person etc., as per rules in force. The applicant submits that the position of the applicant should be examined whether he is a temporary or permanent employee only as on 1-7-92. If he is not confirmed on that date he should be allowed to appear for the examination. We have also held earlier that the applicant was confirmed w.e.f., 1-9-92 retrospectively by an order dated 20-2-92⁶. Hence the case of the applicant has to be considered for the selection held on 26/27th June, 1993.

17. Even if ex-servicemen were selected on merits they cannot be shown against the general category as they were allowed to appear for the examination with age relaxation. Hence, those ex-servicemen who were given age relaxation to appear for the selection can be shown as selected against the ex-servicemen quota only in view of the relaxation of the age given even if they pass the examination meritoriously.

18. The High Court of AP had held in W.P.No.2134/90 dt. 27-2-91 as follows:-

"To tone up administration or to maintain standards in regard to administration, the concerned authorities may prescribe minimum marks in regard to the categories for whom the posts are reserved. But it is submitted for respondents that no such minimum was prescribed for Ex-servicemen. In such a case for all the Ex-servicemen etc., who were called for interview there should be separate selection list and those who are in the ranks upto the quota for them have to be selected, and so long as sufficient number of Ex-servicemen etc., of that category are available, those seats cannot be filled up by treating them as un-reserved."

From the above it appears that the minimum marks should be fixed for the ex-servicemen to be accommodated against their quota and there should be a separate selection list for ex-servicemen accommodating those who come within the quota

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14. The applicant submits that in the notification, the age limit is fixed on a particular date. If he is a temporary employee on that date, he should be allowed to sit for the examination even if he is made regular subsequently. The consideration to allow an ex-serviceman for re-appointment is to be decided on this basis on the date of issue of the notification or on the date of examination, but not on any other date. That is why we have said that he is to be permitted for the examination held in June 1993 but not for the examination held in July, 1996.

15. The applicant attributed lapses on the part of the respondents on various counts and on that basis requested for allowing these OAs. These are examined below:-

The first contention of the applicant is that in the examination conducted on 26/27-6-93, 11 vacancies were reserved for ex-serviceman. But only 2 posts were filled by ex-serviceman. The applicant though eligible for appointment against that quota his case was not considered. Those 2 ex-servicemen who were appointed were appointed on their own merits. The respondents should have posted all the ex-

servicemen to the extent of 11 vacancies by issuing a separate selection list for ex-servicemen selection and those who come within the quota earmarked for them. For this he relies on the judgement of the High Court of AP in W.P. No. 2134/90 dated 27-2-91. He further submits that the respondents failed to enlist his name for the post in accordance with the

judgement of the High Court as he had performed well in the examination.

16. In the notification issued in Feb. 1993 the age for

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the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance of such candidates.

23. The respondents in the reply submit that there is no relaxation of standards for ex-servicemen for appointment and they should possess the general standard to fill all the vacancies reserved for them. We do not agree to that in view of the instructions of the DoP&T dated 12.2.86. This is also the view taken by the A.P. High Court in the Writ Petition No.2134/90. It appears that this point has not been considered by the respondents in these two selections. This point should also be kept in mind.

25. The relaxation of the standards mentioned in the letter dated 12.2.86 applies only to the selection procedure. It means when ex-servicemen are admitted to the selection, the marks fixed for empanelling them may be less as compared to general candidates or any other form of relaxation can be given to fill up the vacancies earmarked for ex-servicemen. This relaxation is provided to help the ex-servicemen as they may not be able to compete with a young graduate who had just come out after graduation. This relaxation is in no way applicable to the minimum educational qualifications as prescribed in the notification calling for applications for the post of J.T.O. in this case. The minimum educational qualification prescribed should be fulfilled before admitting the ex-servicemen for the selection to the post for which the notification is issued.

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earmarked for them.

19. From the above, it appears that the following two conditions are laid down for filling up the vacancies against ex-servicemen quota by the AP High Court. They are (i) that a minimum mark should be fixed for selection of ex-servicemen against their quota and those got the marks above that minimum should be selected against that quota to the extent vacancies earmarked for them. (ii) A separate selection list has to be prepared for filling up the ex-servicemen quota on the basis of the above position.

20. It appears that the above procedure was not followed in the present case. Hence, it is essential to adhere to those instructions by the respondent authorities in future.

--- the applicant is that the lower standard for selection has to be fixed for ex-servicemen. For this he relies on the letter of the Min. of Personnel, Public Grievances and Pensions, bearing No.15012/8/82-Estt(D) dt.12-2-86 (Page-13 to the OA). Para-3 of this letter is relevant. This para reads as below:-

"6-A Lower Standard for selection. In case of direct recruitment, if sufficient number of candidates belonging to the Ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance of such candidates."

22. From the above it is evident that in case sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up

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is stated in the reply that there is no provision for carry forward of vacancies reserved for ex-servicemen as clarified by the DoP&T. That letter was issued on 24.1.83. But the DoP&AR vide Office Memorandum dated 12.3.87 had instructed that the vacancies reserved for ex-servicemen be kept vacant and carried forward for at least one year before dereserved and filled up by others. The letter of 12.3.87 was issued after the earlier letter dated 24.1.83. Hence the later letter ^{d 12.3.87} will hold good for carrying forward the unfilled vacancies and not the earlier letter. Hence, the respondents should act in accordance with the letter dated 12.3.87 of the DoP&T and carry forward the vacancies reserved for ex-servicemen if not filled for at least one year before those unfilled vacancies are dereserved and filled by others. This point also needs to be kept in mind by the DoT.

27. From the above analysis, the respondents should take note of the following: (i) fixing of ^{minimum} marks for ex-servicemen ^{to become eligible} to be empanelled; (ii) issue of separate selection list for ex-servicemen; (iii) lower standard for selection to be prescribed for the quota to be filled by ex-servicemen subject to the condition that such relaxation will not affect the level of performance of such candidates and (iv) the unfilled vacancies earmarked for ex-servicemen should be carried forward for at least one year before they are being dereserved and filled by others.

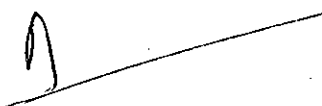
28. The Department of Telecommunications appears to be not fully aware of the above instructions and hence they have not followed those instructions in the examination

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25. The applicant further submits that in case the ex-servicemen quota could not be filled in a particular year the vacancies should be carried forward. In the examination conducted in June 1993 there were only two ex-servicemen appointed against the 11 vacancies reserved for them for that selection. Hence, the unfilled vacancies of ex-servicemen for that year should be carried forward.

26. *In support of* For the above contention, the applicant relies on the Department of Personnel, P.G. & Pensions O.M.No.36034/10/85-Estt./((SCT) dated 12th March, 1987 (Page-10 to the rejoinder). The High Level Committee on the problems of Ex-servicemen had recommended that "the vacancies reserved for ex-servicemen be kept vacant and carried forward for at least one year before these are dereserved and filled up by others." The recommendation was accepted and the Office Memorandum dated 12.3.87 was issued whereby the unfilled vacancies reserved for ex-servicemen should be kept vacant and be carried forward for at least one year before dereserved and filled up by others. The respondents in their reply submit that due to non-availability of eligible candidates from the ex-servicemen category the unfilled posts reserved for ex-servicemen can be filled by OC candidates from the same recruitment advertisement. There is no provision for carry forward of vacancies reserved for ex-servicemen. Hence, carry forward of the left over 9 vacancies in the selection of 1993 ^{was} held in the year 1993 is not necessary. For this they rely on the letter of the Telecommunications Directorate bearing No.TA/RE/5-1/Rlgs. dt. 24.1.83 (Page 9 to the reply). It

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any of the
In the notification, the Degree in /various Engineering
disciplines /^{mentioned} or equivalent qualifications or AMIE degree in /^{any} of
the various Engineering disciplines /^{mentioned} are necessary
qualifications. Alternatively, B.Sc.,/B.Sc.,(Hons) with
Physics and Mathematics as MAIN/Elective/Subsidiary/
Additional subjects with at least 60% marks in aggregate
obtained in the examination of a recognised University is
also prescribed. Thus, a candidate with B.Sc., graduation
can apply subject to the other conditions prescribed
therein.

31. The applicant possesses the graduation
certificate in view of his service in Air Force for over 15
years. This graduation certificate reads as below:-

INDIAN AIR FORCE

GRADUATION CERTIFICATE

This is to certify that as
per Government of India, Ministry of
Personnel, Public Grievances and
Pensions (Dept. of Personnel &
Training) OM No.15012/8/82/Estt(D)
dated 12 Feb.87, Ex-servicemen who are
matriculate (which term includes ex-
servicemen who have obtained the Indian
Army special certificate of Education
or the corresponding certificate in the
Navy or the Air force), and has put in
not less than 15 years of service in
the Armed Forces of the Union may be
considered eligible for appointment to
any reserved vacancy in Group 'C' posts
for which the essential qualification
is graduation and three experience of

held for JTOs in 1993 and 1996. The above instructions should be kept in view for future selection. However in the case of the applicant herein, the above instructions may not be essential and non-observance of those instructions may not be detrimental to the interest of the applicant herein, for the reasons mentioned herein below:-

29. The respondents in their reply states that the applicant does not possess the educational qualification required for admitting him for the selection whereas the applicant submits that he has the graduation certificate issued by ^{the} Army and that certificate makes him eligible for admitting him for the selection of JTO.

30. In the notification issued for recruitment of JTOs, the minimum educational qualification prescribed reads as below:-

"MINIMUM EDUCATIONAL QUALIFICATIONS:
Degree in Mechanical/Electrical
Engineering/Telecommunications/Radio/
Electronics/Computer Science
Engineering from a recognised
University or equivalent qualifications
or AMIE Degree/Degree equivalent there
to in the above disciplines. Or
B.Sc.,/B.Sc.,(Hons) with Physics and
Mathematics as
MAIN/Elective/Subsidiary/Optional/
Additional subjects with, at least 60%
marks in aggregate obtained in the
examination of a recognised
university."

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36 the advertisement. The applicant could have obtained clarification for this from the authority who issued the graduation certificate to know whether the graduate certificate is equivalent to the qualification prescribed for applying for the post of JTO. But it appears that the applicant had made no attempt to get such clarification. Further, it is to be noted that the graduation certificate issued by ^{the} Army is only to enable the ex-servicemen to get some reasonably good job in Group-C in the Civil services. To us, it appears that only non-technical Group-C posts without any experience of technical or professional nature can be applied with this certificate. The post of JTO is a technical post. Mere graduation without any knowledge of Science at the graduation level may not be adequate to discharge the duties of the JTO. Hence, when the respondents submit that the graduation certificate is not sufficient for the post of JTO, then such a submission cannot be treated as incorrect or against any rule.

34. In OA.765/95 decided by this Tribunal on 18.3.98 the bonus marks given to a candidate having the Army graduation certificate for appointment to the post of Postal Assistant to be filled by ex-serviceman was questioned by one of the candidates for that selection, who was also an ex-serviceman. The applicant in that OA questioned the grant of bonus mark to those who possess graduation certificate issued by the Army and submitted that such candidates who ^{did} not possess any degree of B.A., B.Sc., etc., taken through an University ^{were} ~~are~~ not eligible to get the bonus mark. Ex-servicemen who possess the B.A., B.Sc., B.Ed., etc., obtained through an University only can

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technical or professional nature is not essential.

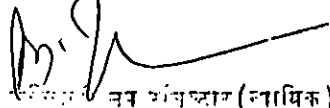
In view of the above concession, Service Number 605000 'S' Rank ex Sergeant Name & initials C.V.RATNAM Trade RADIO FITTER who had served in the Indian Air Force for SIXTEEN YEARS from Apr. 72 to Aug. 88 may be considered educationally qualified for reserved Group 'C' posts where prescribed qualification is graduation."

32. It is evident from that ^{e above} extracted graduation certificate that for appointment in Group 'C' posts for which the essential qualification is graduation, the graduation certificate issued by the Army is sufficient. It also states that where the certificate for appointment in Group-C where experience of technical or professional nature is not essential, this graduation certificate is ^e adequate.

33. From the above, it is clear that this is a mere graduation certificate to enable ex-servicemen to appear for the selection where graduation is the only condition prescribed without addition of any marks or without the knowledge of any other science subjects to obtain that graduation. In the present case, the applicant cannot be equated to a graduate who had obtained a University degree in B.Sc. with Physics and Mathematics as MAIN/Elective/ Subsidiary/Optional/Additional subjects with at least 60% of marks in aggregate of a recognised University. Hence, the graduation certificate produced by him may not be equivalent to the prescribed graduation qualification in

36. In view of what is stated above, we find no merits in both the OAs and hence both the OAs viz., O.A.313/95 and OA.818/96 are dismissed. No costs.

प्रमाणित प्रति
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न्यायालय न्यायिक न्याय प्रमुख (न्यायिक)
Court Officer (Dy. Registrar)
केन्द्रीय न्यायिक न्याय प्रमुख
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

केस संख्या
CASE NO. OA.313/95 818/96
दिनांक 22/4/98
Date of Judgment
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Section Officer (Dy. Registrar (J))