

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1359/95

dt. 26-8-97

Between

K. Munirathnam Naidu : Applicant

and

1. Telecom District Manager
Tirupati

2. Chief General Manager
Telecom, AP Circle
Hyderabad

3. Union of India, rep. by
the Secretary to the Dept. of
Telecommunication,
New Delhi

4. Director General
Telecommunications
New Delhi

: Respondents


Counsel for the applicant

: C. Suryanarayana
Advocate

Counsel for the respondents

: N.R. Devaraj
Sr. CGSC

CORAM

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN) 

(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)).

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Heard Sri C.Suryanarayana for the applicant and Sri N.R.Devaraj, standing counsel for the respondents.

2. As per the provisions of Telecom Technical Assitants Recruitment Rules issued by the Department of Telecommunications on 22-7-91, Group-D employees borne on the regular establishment of the Telecom Engineering Department, possessing a minimum qualification of three year Diploma in Electrical/Mechanical/Radio/Telecommunication/ Electronic Engineering awarded by any recognised Technical Institute were eligible to be considered for appointment as Telecom Technical Assistant. The cases of such candidates had to be considered on the basis of seniority-cum-fitness by a DPC consisting of two officers of Senior Time-scale of Indian Telecom Services Group-A, to be nominated by the Head of the Circle.

3. The applicant who passed his SSC was granted temporary status on 1-10-1989 and his services were regularised as mazdoor from 1-9-93. Besides passing the Phone Mechanic examination in 1994 (but not actually appointed) he also acquired a four-year Diploma in Electrical and Electronics Engineering. He was thus eligible to be considered for promotion to the post of TTA.

4. The Department, however, amended the rules of recruitment on 31-12-1994 whereby the Group-D officials who were eligible under earlier recruitment rules were left out from the altered eligible groups of officials. When the applicant was informed that he was not promoted due to lack of eligibility as per the amended regula-

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tion, he submitted a representation to the authorities with a request to consider his case for promotion in the cadre of TTA. The request was turned down on 13.9.95 vide Annexure-2 on the ground that only Group-C employees borne on the regular establishment are eligible for promotion to TTA.

5. The grievance of the applicant in this case are two-fold. Firstly, although he succeeded in the qualifying test for Phone Mechanics held on 25.6.94, he was actually not promoted on account of the fact that the Department had evolved a new policy which preferred Line Inspectors, Sub-Inspectors and linemen for such promotion on the ground that 2 posts of Linemen were to be converted into one post of Phone Mechanic with a view to creating a new cadre of Phone Mechanics in Group-D. It is submitted by the applicant that he is the only Diploma holder among Group-D employees of Tirupati SSA. If the Department had promoted him to Phone Mechanic in the normal course before the amendment of rules, he would have been in Group-C, and thereby would not have been deprived of the benefit of recruitment as TTA. His non-promotion was due to a sudden change in the policy of the department to accord preference to Linemen for promotion to Phone Mechanics, leaving the regular mazdoor category entirely beyond consideration. This shift, introduced very abruptly, left him out of reckoning of what had been his legitimate expectation for promotion to Phone Mechanic.

6. The second grievance of the applicant is that, according to the schedule of 1991, the posts of TTA were to be filled entirely by promotion, on the basis of seniority-cum-fitness from among Group-C and Group-D employees borne on the regular establishments in the Telecom Engineering Wing of the Department provided such employees possessed the minimum

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qualification of Diploma in Engineering after passing SSC examination. Such Diploma had to be awarded by a Technical Institute duly recognised by a State or Central Governments

The present applicant was awarded a 4-year Diploma Course Certificate, as required by rules, in November, 1994. It is mentioned that he had passed all the papers in November, 1994, and qualifying marks in only one paper in the supplementary examination held in 1995. It is his submission that the supplementary examination is to be held as a part of the main examination inasmuch as success in the latter is only in part completion of the main examination itself. He insists that inasmuch as the main examination was held in November, 1994, his case deserved to be considered on the basis of the fact that he had duly written the main examination before the recruitment rules were amended in December, 1994. As per the old rules, Group-D employees with a pass in 10th standard and the requisite Diploma in Engineering were eligible for recruitment as TTA. In this connection he cites the cases of S/Sri K.V.R.R. Prasad and Shaik Anwar Basha, who were also regular mazdoors like himself, in Vijayawada Telecom District. These two officials were promoted as TTAs on 23.6.95. Thus the applicant bases his claim on the fact that:

- (a) He had duly qualified in the screening test for Phone Mechanics even though he may not have been actually promoted due to reasons of changed policy of the department; and
- (b) He was duly eligible to be considered for TTAs recruitment even on the basis of the qualification of possessing a Diploma in Engineering.

5. The applicant also questions the fairness of the amendment introduced by the Department in December, 1994, whereby

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unlike under the provisions of the Group-D Rules, which are totally eliminated for recruitment to TTA. Though the Government has the power to amend rules from time to time in the overall interests of services, it cannot operate against one group of employees even where they held the requisite qualifications. In this connection Sri C. Subramanyam, learned counsel for the applicant, invited attention to the judgment of the Hon'ble Supreme Court in 1983 SCC (145) 145 (D.S. Nakar vs. Union of India) and argued in the light of the principle laid down therein that all Group-D employees in possession of a diploma eligible before or after the amendment to TTA Recruitment Rules - form a homogeneous class and cannot be discriminated by way of subsidiary classification into two groups merely on the understanding that discriminatory ground that some had obtained a diploma before and some after the amendment. The said argument was thus unwittingly introduced in violation of the principle laid down by the Hon'ble Supreme Court in 1983 SCC (145) 145 (D.S. Nakar vs. Union of India) and the object sought to be achieved through it. Although no formal affidavit was filed by the respondent in this case the case was elaborately argued by the learned counsel for the respondent, Sri H.R. Devata. His main contention was that the applicant's plea of having passed the recruitment test for the phone-mechanics and thereby as having acquired eligibility for promotion to TTA is devoid of any merit. More so, since the qualifying/screening test does not confer any eligibility on him unless he had been duly appointed as phone-mechanic in a clear vacancy. The applicant was not appointed and therefore, his success in screening or qualifying test is of no relevance or consequence. Secondly, the learned Standing Counsel also put forward the claim of the applicant that the passing in one paper at supplementary examination by him did indeed put back his success

unlike under the previous rules, the Group-D employees were totally eliminated for recruitment to TTA. Though the Government has the powers to amend rules from time to time in the overall interests of services, it cannot operate against one Group of employees even where they hold the requisite qualifications. In this connection Sri C.Suryanarayana, learned counsel for the applicant, invited attention to the judgement of the Hon'ble Supreme Court in 1983 SCC (L&S) 145 (D.S.Nakara Vs. Union of India) and argued in the light of the principle laid down therein that all Group-D employees in possession of a Diploma -- either before or after the amendment to TTA Recruitment Rules - form a homogeneous class and cannot be discriminated by way of subsidiary classification into two groups merely on the untenable and discriminatory ground that some had obtained a Diploma before, and some others after, the amendment. The said amendment has thus unwittingly introduced an element of invidious distinction by splitting the diploma-holders into ^{two} ~~2~~ divergent groups without any reasonable justification or valid nexus between the change so introduced and the object sought to be achieved through it.

6. Although no formal affidavit was filed by the respondents in this case the case was elaborately argued by the standing counsel for the respondents, Sri N.R. Devaraj. His main contention was that the applicant's plea of having passed the screening test for the phone-mechanics, and thereby having acquired eligibility for promotion to TTA, is devoid of any merit. Mere success in qualifying/screening test does not confer any eligibility on him unless he had been duly appointed as phone-mechanic in a clear vacancy. The applicant was not so appointed and, therefore, his success in screening or qualifying-test is of no relevance or consequence. Secondly, the learned Standing Counsel also refuted the claim of the applicant that the passing in one paper at supplementary examination by him did indeed put back his success to

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the main examination itself. He argued that the date of his success has to be reckoned from the date when the competent agency conferred the diploma on him and not earlier as claimed by the applicant.

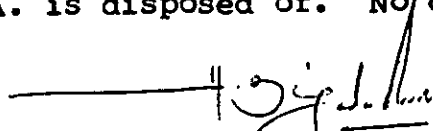
7. The facts and submissions of both parties have been carefully noted. In the present case, but for the amendment which was introduced in the then existing recruitment rules, the applicant, belonging to Group-D, was indeed fully eligible for promotion to TTA subject to his fulfilling the other qualifications. The change in the policy deprived him of the chance to be so considered and thereby the change certainly caused his normal and legitimate expectations to be belied quite abruptly. The applicant is a Matriculate and duly passed a 4-year Diploma in place of only 3-year Diploma as required under the rules. The amendment did introduce an element of differentiation between those who had obtained the diploma immediately before and after the change came into effect, although it is evident that candidates in either cases would have the same background, knowledge, skill^{and} proficiency. To this extent, the argument put forth on behalf of the applicant on this score is not wholly devoid of merit and deserves consideration. A note has also to be taken of the fact that two other regular mazdoors, S/Sri K.V.R.R. Prasad and Shaik Anwar Basha, in Vijayawada Telecom District, were promoted to TTA. In the light of this fact alone a similar benefit ought surely to be extended to the applicant who too is the only regular mazdoor, possessing a valid diploma in his Unit. It would only be fair that he too is given a similar treatment and considered for promotion to TTA. The argument of the applicant that he would have entered Group-C cadre but for the unexpected delay in his promotion to Phone Mechanic against any one of the vacancies

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existing in 1994, also deserves consideration.

8. In the light of the discussion in the preceding paragraph, the order contained in Telecom District Manager, Tirupati No. B/TTA/N/73 dated 13.9.95 is accordingly set aside. It is directed that the applicant be considered for promotion to the cadre of TTA on par with other eligible employees. It was mentioned on behalf of the applicant that his name should on the same basis be considered for imparting the necessary training with the next batch of officials to be deputed for the training class. It is directed that this aspect too shall be considered in the light of the order passed above.


Thus the O.A. is disposed of. No costs.



(H. Rajendra Prasad)
Member (Administrative)

26th August, 1997

sk/avl/vm


Deputy Registrar (Dce)

O.A. 1359/95

To

1. The Telecom District Manager,
Tirupati.
2. The Chief General Manager,
Telecom, A.P.Circle, Hyderabad.
3. The Secretary to the Dept. of Telecommunications,
Union of India, New Delhi.
4. The Director General,
Telecommunications, New Delhi.
5. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One spare copy.
8. One copy to HHRP.M.(A) CAT Hyd.
9. One copy to D.R.(A) CAT.Hyd.

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I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

DATED:- 26/8/97

~~ORDER/JUDGMENT.~~

M.A.,/RA.,/C-A.No..

in

O.A.No. 1359/95

T.A.No.

(W.P.)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No. order as to costs.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

ब्रेख (DESPATCH)

29 AUG 1997

हैदराबाद ब्याचपीठ
HYDERABAD BENCH