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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.1477/95

Dt. of decision: 1-5-96

Between:

K.S. Prasada Rao

.. Applicant

and

1. The Telecom District Engineer,
Srikakulam.
 2. The Chief General Manager,
Telecom., A.P. Hyderabad.
 3. The Director-General, Telecom,
New Delhi.
- .. Respondents

Counsel for the applicant : Shri C. Suryanarayana

Counsel for the respondents: Shri V. Bhimanna

Coram

Hon'ble Shri Justice M.G. Chaudhari : Vice Chairman

Hon'ble Shri H. Rajendra Prasad : Member (A) *9/30/96*

O.A.No.1477/95


JUDGEMENT



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



The applicant in this O.A., Shri K.S. Prasad Rao, was an examinee at the competitive test for promotion to Jr. Telecommunications Officer (J.T.O.), having earlier been promoted in 1988 to Transmission Assistant (T.A.) from his substantive appointment of Technician, to which post he was initially appointed in 1978.




~~He was competing in~~ He was competing in 1994 for one of the 24 (OCs) vacancies of JTOs which had been notified in March, 1993. Shri Rao offered his candidature for the competitive examination under 20% quota earmarked for TAs with a minimum regular 5-year service, including the period spent on training, in the feeder category. His candidature was duly accepted and a hall-permit was issued to him. The examination which was originally scheduled for March, 1993, was postponed thrice and ultimately held in September, 1994. When the result of the examination was announced in December, 1994 (Annexure-1 to OA), the name of the applicant did not, however, find place in the list of successful candidates. Subsequently it was learnt that the applicant had qualified in the examination, as revealed by the marks-sheet issued to him, but did not come in the zone of selection.


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2. The grievance of the applicant is that certain officials who were junior to him in service were declared successful while he was not so declared. The names of S/Shri B. Nagabhushanam and K. Asethu and Ms. V.S. Indira are mentioned in this context. The applicant contends that his seniority ought to have been accorded due weightage in the selections whereas  marks were alone given the primacy of consideration. This, according to him, conferred an  undue disadvantage on his juniors while the longer service rendered by him was unfairly ignored.

3. The applicant prays for a direction to be issued to the respondents to (a)  'publish' his result and (b)  depute him for training which is a pre-requisite for promotion to JTO. The prayer is based on the following grounds:

- (i)  the non-'publication' of his result is illegal;
- (ii) the respondents are bound to depute him for training; 
- (iii) since an official junior to him, viz. K. Asethu, was so deputed,  ipso facto, he is entitled to be trained and promoted notwithstanding the fact that there was a marginal shortfall in his service.


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4. An interim order, in the following terms, was passed on 6-12-1995.

"The result of the applicant has to be published and if he is selected, he has to be sent to the Training Course which had commenced from 4-12-1995. But he shall not be given order of appointment to the post of JTO even if he successfully completes the training course, until further orders."

5. The respondents in their counter affidavit explained the general scheme of the competitive examination for promotion to the cadre of JTO, and eligibility requirements of the candidates. It is submitted that a candidate, for being able to be considered under 20% quota, should have a minimum service of 5 years in the feeder category of T.A.; this includes the period he may have spent on training. In the instant case the applicant, on scrutiny of relevant record, was revealed to have to his credit a service length of only 4 years 4 months and 4 days. He was thus seen to have a shortfall of approximately 7 months as against the required 5 years. Also, it was revealed from ^{the} respondents' scrutiny of the relevant record that, as against an eight-month regular training imparted to TAs, the applicant had received an abbreviated training of only 3 months. This was the reason why he fell short of the 5 years service requirement. Explaining the reason for the issue of a hall-permit to the applicant to take the examination under 20% quota — as applied for by him — when he was short of the

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service eligibility, it is stated by the respondents that the hall-permit was issued based on the information furnished by the applicant in his application form for appearing at the said examination. The information provided by him in the application form was inadequate and the facts could be verified with the relevant service records only subsequently.

Since, however, (i) the applicant was eligible to take examination under another 15% quota earmarked for departmental candidates, and (ii) the hall-permit as well as the examination itself were common for both categories (quotas), it was not considered advisable to cancel his candidature altogether. For the same reason, it was also considered inadvisable to issue a revised hall-permit enabling him to appear for the same examination under a different (15%) quota which might have given rise to avoidable confusion at that stage. The respondents therefore decided to permit him to take the examination under (15%) quota to which he was eligible and to scrutinise his entitlement under an appropriate category (quota), vis-a-vis his performance at the examination, at a later stage at appropriate time.

6. As regards the service seniority of Ms. V.S. Indira and S/Shri B. Nagabhushanam and B. Chandra Rao, it is stated that, unlike the applicant, these officials had duly

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completed the service requirement of 5 years in the respective feeder-categories and, therefore, fully entitled to be considered under the 20% quota. Another candidate, M. Srinivasulu, was also similarly considered as he possessed a B.Sc. degree with ~~the~~ Mathematics and Physics as his elective subjects, and because he also secured more than 60% marks at the graduation examination.

7. The relative placement of Shri K. Asethu and the applicant is also explained by the respondents. It was stated on their behalf that the applicant had relied on the result of the examination for recruitment to the cadre of TAS contained in GMT, Hyderabad No.TA/RE/13-7/86/III, dt.12-5-87 (Annexure 1 and 2 to NOTES ON THE CASE submitted by the learned counsel for the applicant on 13-3-96) to argue that he was senior to K. Asethu. The respondents ~~disclosed~~, however, that this particular notification was superseded a shortwhile later and the revised results were notified in D.G.Telecom, New Delhi No.TA/RE/13-7/86/III, dt.28-8-87. The position of two candidates, viz., the applicant and Shri Asethu, as per the earlier and revised notifications, is as under:

K. Asethu	TA:1986 - 7th position	1985 - 8th position
K.S.Prasada Rao	TA:1985 - 7th position	1985 - 26th position

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Thus the complaint of the applicant that an official who was junior to him (Mr. Asethu) had been deputed for TAs training earlier than himself is unacceptable since the said Mr. Asethu had been duly placed several places above the applicant in the 1985 recruitment of TAs. The seniority which the applicant claims for himself is, therefore, based on an incorrect premise.

8. The respondents finally submit that the petitioner's case was correctly considered as per his seniority, length of service, performance and ranking in the JTOs Examination, under an appropriate quota to which he was eligible. The reason why he could not be selected or deputed for further training was that he did not come within the zone of merit-placement because he secured 37th place in the said examination as against the 24 vacancies which had been notified and were available for filling.

On the strength of the above submissions the respondents urge that the O.A. be dismissed since it is totally devoid of merit.

9. The applicant's first plea is that, once having accepted his candidature at the examination and having thereafter issued the hall-permit for the ^{same,} the authorities

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are estopped from retracting on the acceptance so given and to shift consideration of his candidature under a different quota for which he had not applied at all. In support of this stand-point, the learned counsel cites the following cases:

- i) Premdas Adiwai Vs UOI - SLJ 1994 (111)
CAT Jodhpur 339
- ii) K.T. Joseph Vs. D.G. Posts and Ans. (1994) 28 ATC 190
SLJ 1993 (1) Kerala 629
- (iii) DGM Phones Vs. Inder Sain Aleg - 1981(1) SLJ 487. DELHI
- (iv) Vijaya V. Ankatesh Pai Vs UOI^{and Ors} - 1988 Lab. I.C.
CAT New Bombay 95
- (v) Jawarilal Vs UOI - 1994 (26) 891 ATC

It would be appropriate to note here that, according to the respondents, the initial acceptance of the applicant's candidature, and the resultant issue of a hall-permit to him, were based solely on the applicant's own information as furnished by him at the time of his applying for the examination. And even though the respondents are not absolved of their responsibility in this regard, the facts concerning the length of the applicant's service could come to light only during a subsequent scrutiny of the information provided by him by an actual reference to his service record. We are in partial agreement with the applicant's assertion that a large part of the responsibility in this regard rested with the respondents who were required to carry out at least a preliminary check as regards the basic eligibility of a candidate before accepting his candidature. Having said this, we also envisage situations which could well arise when even a scrutiny of bare

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facts of a very large number of applicants may not bring to light inaccurate or incorrect statements made therein until a more detailed check is carried out with reference to the basic service record of all the candidates. This can be done only subsequently, prior to which stage there can be only two courses; either to reject the candidature altogether in the very beginning, or to place provisional reliance on the candidate's written statement as contained in his application form. ^{in this instance} The respondents evidently chose to rely on the information provided by one who was one of their own officials and would not normally be expected to furnish incorrect or inaccurate information. Such course of action and reliance were dictated by the practical realities of the situation.

10. But a significant part of the responsibility of providing correct and complete information rests on the applicant as well in all such instances. What has happened in the present case is that the information furnished by the applicant turned out to be either imprecise or incorrect or both. Considering the unusual features of this case, we considered it necessary and advisable to direct ~~the~~ production of the application submitted by the petitioner for appearing at the examination. Even a cursory scrutiny of the document reveals that the remarks recorded by the petitioner are guardedly

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cryptic and totally insufficient. While we do not actually hold that the applicant was deliberately misleading the authorities in recording the said remark, it has to be said that, in our view, he chose, either by design or through inadvertence — we should like to believe that the ~~latter~~ was the case — to be vague and imprecise in furnishing the information against the length of service column in the application submitted by him while applying for the examination. This fact considerably weakens the force of his argument against the respondents. In coming to this conclusion, it is not intended or implied that the entire blame was only on the applicant, or that the respondents are absolved of their share of responsibility in the matter.

11. We proceed now to examine the contentions and responses relating to the two main limbs of the applicant's arguments in the case.

(a) In the case of Préndas Adiwai Vs. UOI (SLJ 1994 (iii) 339), the applicant was sought to be reverted from the post of LDC several years after his promotion from Group 'D' post on the untenable ground that the Madhyam Examination passed by him from Hindi Sahitya Sammelan, Allahabad, declared equivalent to SSLC in 1971, was later held not to be so. The Tribunal held that the promissory estoppel applied to this case because the

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applicant had not concealed any material fact to appear at the competitive examination for promotion from Group 'D' to LDC, and had been even allowed to continue in the promotional post for more than five years prior to the impugned ^{er}rev_Xsion. The facts of this case do not in any way lend support to the applicant in the present case as he is seen not to have been promoted to JTO, and also did not disclose full facts of his service at the time of applying for permission to appear for the competitive examination leading to promotion to JTOs cadre.

(b) In Vijaya Vyankatesh Pai Vs. UOI and Ors (1988 CAT New Bombay Labour I.C. 95), the respondent department sought to terminate the applicant's services after she had served in a post for more than 18 months on the inadmissible ground that she was found to be overaged. She had earlier applied to appear at a competitive examination for initial recruitment held by the Staff Selection Commission (SSC), submitted her application clearly mentioning her date of birth, was permitted, and later selected and appointed, to a post in the Income Tax Department, and joined it after producing all her certificates and testimonials. It was held that the benefit of the lapses of the S.S.C., which had selected her, and the Income Tax Department, which had appointed her, must in equity go to the applicant

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since she had not concealed any fact, including her date of birth, when she applied for the post. None of the facts of the instant case are remotely akin to those of the case cited here.

(c) K.T. Joseph, the applicant in ^{the} third case cited on behalf of the present applicant (1994(28) ATC 190), had passed the JAO Part I examination but was not permitted to take the Part II of the same examination held later, on the impermissible ground that he did not put in the requisite service necessary for taking the latter examination. It was held that the petitioner had acquired the right to appear at Part II of the examination as a part of the benefit earned by him by virtue of having passed the Part I examination earlier. The verdict of the Tribunal was based on a previous judgement of Hon. Supreme Court in Narendra Chadda Vs UOI (AIR 1986 SC 638) wherein it was held that when there is a power to relax the rules, it will be presumed that the rule was relaxed when an official was allowed to do a thing which could have been done only if the rule had been relaxed. Here too the facts of the present case are so dissimilar to the case cited that the applicant cannot possibly derive any benefit from it for the reason that

(i) he did not emerge successful and did not thereby

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acquire any right as a part of the benefit of the said examination, and (ii) no power to relax any rule in regard to eligibility to appear at the JTOs examination is shown to exist in the relevant scheme in the instant case, nor could it, for that very reason, could be so relaxed.

(d) The case of Jawarilal Vs UOI (1994 (26) ATC 891) too proceeds on lines quite different from that of the instant OA. The applicant therein was junior to some of the candidates who had been permitted to appear at a qualifying examination but was senior to them in merit. Moreover, he was seen to be short of the required service of 10 years by just 5 days. And yet, he was not allowed to take the examination. There appeared to be a specific provision in the relevant recruitment rules in that particular case which allowed the authorities to relax the requirement of minimum length of service. They did not choose to invoke it in the case of the candidate although his juniors were allowed to take the examination. All had been earlier selected and placed in a common panel and Jawarilal was senior in merit to many of them. In that view of the matter, it was held that a person who is senior in the merit list becomes automatically eligible to appear at an examination specially when a

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person lower to him in merit was permitted to take the promotional examination. No fact of this case tallies with the facts of the instant O.A. The shortfall of service in the case of Prasad Rao, the present applicant, was much more than marginal; he was not senior, either in service or merit (cf. Para 7 above) to any of the candidates (named by him) who were allowed to take the competitive examination under the 20% quota; no provision in the recruitment rules has been cited by him, as already indicated, whereby the shortfall in his service could be relaxed. The applicant cannot, therefore, derive any support from Jawarilal case.

(12)(e) In the last case cited by the present applicant, (DGM Phaneis Vs. Under Secy. P. No. 1281(1) SLJ 487) the petitioner was originally appointed Time-scale clerk in 1952, promoted to Steno-typist, permitted to sit for a competitive examination to fill up a temporary post of (d) Stenographer in 1994, passed ^{it,} ~~it~~ ^{he was} appointed Stenographer and also completed a two-year probation successfully. Besides, he was also confirmed as (5) Stenographer and his lien ~~too~~ was transferred to the said post in 1967, and was subsequently selected to serve with the Indian Cooperation Mission at Khatmandu, Nepal, from among a large number of applicants. After all these events and developments had duly occurred across a span of several years,

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he was sought to be reverted to his original post in the department in 1970 notwithstanding the fact that he had long ceased to hold lien on a Time-Scale Clerk's post. The impugned action was contemplated on the ground that his initial selection as Stenographer was found to have been irregularly made. He was deconfirmed as Stenographer on 19th September, 1970, reverted to his original post of Time-Scale Clerk on the next day and recalled from the Cooperation Mission in Khatmandu.

12. Against the backdrop of facts peculiar to this case, it was held that the action taken by the authorities was incorrect since the applicant had already been confirmed against the post of a Stenographer and had also come to hold a lien on the post. His deconfirmation was also held to attract Article 311 of the Constitution and therefore set aside. Here again, there is no similarity of facts between the case cited by the applicant and those of the present O.A.

13. It is thus seen that none of the cases cited on behalf of the applicant support or sustain his case and it would be futile, therefore, to draw any parallel between them and the instant O.A.

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14. It was repeatedly and vehemently argued by the learned counsel for the applicant that inasmuch as the petitioner's immediate controlling officer had initially certified the correctness of the contents of the application form as submitted by him, the respondents could not be permitted to reverse their stand at a later stage by denying him consideration under the quota for which he had originally applied and been duly permitted. Considering the applicant's own failure to provide accurate and adequate information regarding the length of his service in the first instance, this plea cannot be conceded.

15. It has been held in a catena of decisions by the Hon'ble Supreme Court that Article 311 is not attracted in cases where the Government exercises its power to correct a bonafide mistake; and also that the question of natural justice does not arise in situations where a genuine error is set right by a subsequent rectificatory action (Sundarlal Vs. State of Punjab, AIR 1970 Punjab & Haryana 241; Labh Singh Vs UOI, 1971 (1) SLR 561). Furthermore, it is settled that the doctrine of promissory estoppel cannot be applied to operate against the obligations and liabilities imposed by law, or against valid rules and regulations framed (M.P.Sugar Mills Vs. State of U.P., AIR 1979 SC 621) under the provisions of the Constitution. In the eventual analysis, no ineligible person can be granted any service benefit — specially when such a concession is likely to

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affect other persons adversely — solely on the ground that the principles of promissary estoppel stand against respondents from going back on a permission granted by them.

16. Applying these well-settled propositions of law to the facts of the present case, it can be held unambiguously that in denying consideration of the applicant's candidature under 20% quota of the JTOs examination, the respondents were not acting incorrectly. The initial permission granted to him was the result of a genuine administrative error which was partly caused by the action of the applicant himself. No discrimination can be held to have occurred against him in not considering his case under the quota applied for ^{by} him since he did not fulfil the requisite conditions for the same. The reasons for not cancelling the original hall-permit, and for not issuing a revised hall-permit, have been adequately explained by the respondents and we regard the explanation adequate and acceptable. No violation of the principles of natural justice has taken place and no estoppel can be invoked against the respondents in the light of the facts revealed by the record produced and arguments advanced during the hearing of the case. The applicant was neither senior in the feeder-cadre nor in the merit list. We are satisfied that no official junior to the applicant has been selected or deputed for training by passing his own legitimate claims and rights.

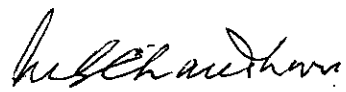
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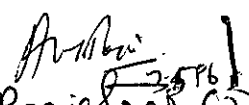
Any consideration of his candidature under the 20% quota would have doubtlessly resulted in an injustice being perpetrated against one other official lawfully entitled to be selected in that quota.

13. In the light of the discussion in the preceding para, we are unable to grant the reliefs prayed for and feel constrained to disallow the O.A. as lacking in merit, and to dispose it of accordingly. No costs.


(H. Rajendra Prasad)
Member (A)


(M.G. Chaudhari)
Vice Chairman

Dated 1-5-96


Deputy Registrar O. C.

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O.A.1477/95.

To

1. The Telecom District Engineer,
Srikakulam.
2. The Chief General Manager,
Telecom, A.P.Hyderabad.
3. The Director General, Telecom, New Delhi.
4. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

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

Dated: 1-5-1996

ORDER/JUDGMENT

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

in

O.A.No. 147/95.

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.

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