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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.992/96 &
O.A.No.1007/96.

Date of order : 18.9.1996.

Between

1. B.N.Murthy
2. V.V.Krishna Reddy
3. K.Govindaswamy

.. Applicants in O.A.No.992/96

And

1. Union of India,
Rep. by its Secretary,
Min. of Communications,
Dept. of Telecommunications,
Sanchar Bhavan, New Delhi.
2. The Director (ST-II),
Min. of Communications,
Dept. of Telecommunications,
Sanchar Bhavan, New Delhi.
3. The Chief General Manager,
Telecommunications,
Andhra Circle, Andhra Pradesh,
Hyderabad.
4. The Telecom. Dist. Manager,
Dept. of Telecommunications,
Tirupati, Chittoor Dist. A.P.
5. The Sub Divl. Engineer (HRD),
O/e the Telecom. Dist. Manager,
Telecommunications Dept.,
Andhra Pradesh, Tirupati-517501.
6. M.Sambasiva Pillai
7. M.Murali
8. P.Narasimha Rao
9. A.Deraikanna
10. G.Chandraiah
11. K.Moulali
12. S.Harinadh
13. V.Venkata Raju
14. K.N.Ramaprasad
15. B.C.Reddeppa
16. P.Subramanyam-II
17. Sk. Abdul Gafeer
18. G.Venkataramaiah
19. S.Narappa Raju
20. N.Laxmaiah
21. K.Ramachandraiah
22. Sk. Abdul Shukur
23. M.Mallikarjuna
24. C.Baleiah
25. D.Munuswamy Kaidu
26. K.Subbarayulu
27. N.Adinarayana
28. A.Krishnaiah
29. K.Nagaraja
30. T.Siddappa

.. Respondents in O.A.No.992/

Counsel for the Applicants .. Shri Meherchand Neri

Counsel for the Respondents .. Shri H.R.Devaraj, Sr.CGSC

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Between

1. J.Devakatacham
2. N.Chinna Derai

.. Applicants in O.A.No.1007/96

And

1. The Chief General Manager,
Telecommunications,
Hyderabad-1.
2. The District Manager,
Telecommunications,
Tirupati-517501.
3. Sub-Divl. Engineer (HRD),
O/o the Telecom. Dist. Manager,
Tirupati-1.
4. M.Sambasiva Pillai
5. M.Murali
6. P.Naracimha Rao
7. A.Deraikanna
8. G.Chandraiah
9. K.Moulali
10. S.Harinath
11. V.Venkata Raju
12. K.N.Rama Prasad
13. B.C.Reddappa
14. P.Subramanyam
15. S.K.Abdul Gaffeer
16. G.Venkatramaih
17. S.Narappa Raju
18. N.Lakshmaiah
19. K.Ramachandraiah
20. M.D.Abdul Shukur
21. M.Mallikarjuna
22. C.Balaiah
23. D.Muna Swamy Naidu
24. M.Subba Reilu
25. N.Adirnarayana
26. A.Krishnaiah
27. K.Nagaraja
28. T.Siddappa

.. Respondents in O.A.No.1007/96

Counsel for the Applicants .. Shri K.K.Chakravarthy

Counsel for the Respondents .. Shri N.R.Devaraj, Sr.CGSC
1 to 3

C O R A M

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

Hon'ble Shri H.Rajendra Prasad : Member (A) *8/*
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Order

Shri Justice M.G.Chaudhari : Vice-Chairman)

tion involved in both these applications
ne these are being disposed of by a common order
sent of the learned counsel for the applicants
ned Sr. CGSC for the respondents. By consent
plications are taken up for hearing and are
being disposed of.

Facts in O.A.No.992/96.

This application has been filed by 3 employees of the Telecommunications Department out of whom the first 2 applicants are Telegraphmen and the 3rd applicant is a regular Mazdoor. All of them are working in Tirupati Division in Group D post. The next avenue of promotion for them is to the post of Phone Mechanic which is a Group C post in the pay scale of Rs.975-1540. The criteria laid down for promotion to the category of Group C post is, a pass in departmental qualifying screening test. A screening test was held on 25.6.94 at which the applicants appeared and were declared qualified. It appears that in the above said departmental qualifying screening test 275 candidates have qualified. The official respondents started sending the qualified candidates for training in batches. It is stated by the learned counsel that by this time 5 batches have been sent for training and have completed the training. The applicants however have not so far been sent for the training. A supplementary qualifying screening test was held on 21.1.96 for these officials who had failed in the earlier screening test. It is averred by the applicants that they had qualified at the main test held on 25.6.94 whereas Respondents 6 to 30 appeared and qualified at the supplementary test held on 21.1.96. The applicants therefore contend that they were eligible to be sent for training before the Respondents at serial 6 to 30 were sent. However, the official respondents issued certain instructions on 12.3.96 in consequence of which a combined seniority list of candidates who qualified in the

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main screening test as well as the supplementary screening test was prepared by taking into consideration their original seniority. Thus the applicants aver that the entire basis and criteria had been altered. In pursuance of these instructions a revised list of 25 candidates was prepared for sending them in the 6th batch for pre appointment training. As a result thereof, the Respondents 6 to 30 were included in the 6th batch to be sent for training to the exclusion of the applicants. This action on the part of the official respondents is challenged in this application. The main contention of the applicants is that these officials who failed in the screening/qualifying test in the first instance i.e., at the test held on 25.6.94 lost their seniority ~~and seniority will reckon the position available after they qualify at the subsequent test and on that principle since the respondents are now likely to get seniority over the applicants i.e., arbitrary and illegal.~~ ^{that is} They contend that the instructions issued by the 2nd respondent and followed by the official respondents are illegal as they give rise to discrimination and deprive the candidates qualified at the first test such ^{as} applicants should get the benefit of earlier training and earlier appointment as Phone Mechanics. The applicants therefore pray that the instructions issued by the 2nd respondent on 11.7.96 and the consequential memo dated 6.8.96 issued by the official respondents ^{be} quashed and setting aside ^{and} the direction ^{be issued} to the Respondents 1 to 5 to operate the list of qualified candidates for sending them for training in the 6th batch which would include the applicants.

Facts in O.A.No.1007/96.

This application has been filed by 2 Group D employees of Tirupati Telecom. District. The next avenue of promotion for them is to the post of Phone Mechanics. The applicants had appeared at the screening test held on 25.6.94.

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They were included in the 6th batch to be sent for pre appointment training. However, that decision was revoked by Respondent No.3 by memo dated 6.8.96 and instead a batch of other 25 candidates was prepared for being sent to the training. It is stated that the aforesaid action has been taken on the basis of circular issued by the 1st respondent according to which the criteria applied is that such candidates who pass the supplementary screening test are being sent for training on the basis of their original seniority. This action of the respondents is impugned on the ground that it is violative of Articles 14 and 16 of the Constitution and espoused to principles of natural justice as well as to the established norms. The applicants therefore seek a declaration that the action of the 3rd respondent based on the memo dated 6.8.96 is illegal and for a direction to the respondents to send the applicants for training before those now included in the 6th batch or those who qualified at the supplementary test ~~and were sent for~~ ^{would be} training.

2. From the above it will be seen that the grievance of the applicants in both the applications is the same.

3. The respondents have not filed a counter in either of the two applications. However, we have heard Shri N.R.Devaraj, learned Standing Counsel for the respondents who made his submissions on instruction; that the deviation made in the policy as a one time measure is fully justified and is not open to challenge by the applicants.

4. The circular letter issued by the Telecom. District Manager, Tirupati dated 23.7.96 requested the S.D.O, Chittoor to depute the candidates mentioned therein for the training of the 6th batch of Phone Mechanics proposed to commence

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w.e.f. 12.8.96. The 3 applicants in O.A.No.992/96 and the 2 applicants in O.A.No.1007/96 were included in that list. The applicants have no quarrel with that list. However, the above circular letter was superseded by the memo dated 6.8.96 issued by the Telecom. District Manager, Tirupati and a revised list of candidates for the 6th batch has been set out in that memo. None of the applicants in the two cases find place. This memo is the subject matter of the challenge.

5. A revised list ^{was} prepared on the basis of instructions issued by the Govt. of India on 11.7.96 on the subject which stated that in supersession of the O.M. dated 3.7.96 on the modality for fixation of seniority of qualified candidates between the main qualifying screening test and the supplementary qualifying screening test in the restructured cadre for the purpose of deputing candidates for pre appointment training it was being clarified that a combined seniority list of qualified candidates both on the basis of the main screening test and the supplementary screening test may be prepared keeping in view their original seniority for deputing them for pre appointment training in the restructured cadres of PTA/Phone Mechanic but for any future examinations the qualified candidates would rank junior to all these candidates. It was also clarified that the interse seniority of the candidates will however continue to be determined based upon the proposed training marks.

6. The applicants having qualified at the test held on 25.6.94, ^{were} they are entitled to be sent for training consistently with the guidelines contained in the circular issued by the Chief General Manager, Telecommunications, A.P.Circle, Hyderabad dated 25.11.95 read with further circular issued on 23.1.96. The sudden departure made with that procedure and the candidates ~~sent for screening~~ who had qualified earlier on that basis were clubbed with the candidates qualifying at the supplementary examination for which the

instructions of the Govt. of India dated 11.7.96 do not provide any rational basis. The learned Standing Counsel submitted that this was only a one time measure adopted and the Govt. of India had considered it necessary in the exigencies of the situation and therefore it cannot be regarded as an illegal decision. The learned Standing Counsel submitted that the applicants had only a right to be considered for promotion according to the rules in operation and if the rules had undergone a change at the hands of the competent authority they have to fall within the ambit of these rules and cannot complain that the rules should not have been altered. It appears to us that even as a one time measure the revised decision does not appear to be reasonable and results in apparent injustice caused to those who had qualified at the main test depriving them of the benefit of appointment on promotion earlier to those who had qualified later. Even with the new policy the basic provision with interse seniority of the candidates will continue to be determined based upon the post training marks and the supplementary test by its very nature was intended for those who could not avail of the main test can lead to no other inference but that those who according to their seniority had availed of the first screening test are being deprived of the benefit they would have earned and such benefit being conferred on those who had come on the scene later on by reason of ~~go to qualify at the~~ ^{joining after} supplementary test being sent for training before those like the applicants who were selected at the main test. We therefore find merit in the contention of the respective applicants that the impugned action of the respondents is unfair and illegal. We ~~cannot force~~ ^{do not suggest} that those candidates who had qualified at the supplementary test should not get the benefit of qualifying at that test. ^{They} ~~however cannot steal~~ a march over those who had qualified at the earlier test. This can be achieved if irrespective of in what batch which candidates are sent whether they be from the main screening te:

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er from the supplementary screening they should all be treated equally on merits earned at the training for the purpose of earning the promotion as Phone Mechanics. This object can be easily achieved if the act of selection on the basis of merit earned after satisfactory completion of training is undertaken after all the candidates who had appeared at the main screening test held on 25.6.94 and those who appeared at the supplementary screening test held on 21.1.96 in Tirupati Division are considered together. In other words, the post training results of all these candidates have to be clubbed together and a merit list prepared depending upon the merit earned after qualifying at the screening test and thereafter the promotions are undertaken to the posts for which the screening test is held. This would bring about uniform opportunity to all the deserving candidates ~~as it is not~~ and is not likely to cause any prejudice to the private respondents who have not chosen to contest the application.

7. The view which we are inclined to take as above is consistent with the view in similar situation taken in the case of Shri Sanjay Kumar Verma & Ors. Vs. U.O.I. & Ors. decided by the Guwahati Bench of the Central Administrative Tribunal reported in 1996(2) ATJ 168.

8. A decision of this Bench (Hyderabad Bench) in Hyder Hussain & Ors. Vs. C.P.O., S.C.Railway, Secunderabad & Ors. reported in 1996(1) ATJ 235 has been brought to our notice by the learned counsel for the applicants. With respect we do not think that the decision leads to a conflict with our aforesaid view. The point for consideration in that case was whether it is possible to assess the comparative merit on the basis of marks obtained when some appear at one examination while others appear at another examination though the syllabus may be the same and it being so how it will be proper to compare the relative merit on the basis of

marks obtained by some in one examination with marks obtained by others in another examination. The Bench was pleased to uphold the contention of the applicants in that case and para 303(a) of the Indian Railway Establishment Manual was read to mean that whenever the candidates selected in pursuance of a particular notification are sent for training in batches by following the panel position in the select list those who were sent in the later batch for training have to be placed below those who were sent for training in the earlier batch and the inter se seniority of these who were sent in the same batch for training have to be determined on the basis of marks secured in the examination that is held after the training. The question in the instant case relates to a step earlier namely, the stage of sending the qualified candidates for training itself. Even in that case also the applicants who have appeared at the test ^{later} were sent for training earlier to the private respondents. The decision therefore does not impinge on the principle that those who had qualified at the screening test earlier than others should be sent for training before those who qualified later. The learned counsel for the applicants drew our attention to a decision of Chandigarh Bench of the Central Administrative Tribunal in the case of Harvail Singh & Ors. Vs. U.O.I. & Ors.

That decision holds that a person who becomes eligible by acquiring a qualification earlier gets a right to be considered for promotion than his senior who has not acquired the eligibility condition or acquired it later than him. Partly this decision helps the applicants and partly the impugned action in the instant case on the part of the respondents gets support. However, the case is distinguishable on the ground that it would be applicable after the training is completed and the candidates are sent for promotion. In so far as the instant cases are concerned whereas the question involved in the instant cases is who should be eligible to acquire the qualification earlier and since the action of the respondents

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✓ results in depriving the applicants of that opportunity we think that the view adopted by us is not ~~inconsistence~~ ^{inconsistent} with this decision.

9. In the result, following order is passed in both the O.A.

Order.

(1) The official respondents are directed that the process of appointment to the posts of Phone Mechanics for which the main qualifying screening test was held on 25.6.94 and the supplementary qualifying screening test was held on 21.1.96, shall be undertaken only after all the candidates who qualify at both the above testes have been sent for pre-appointment training and a merit list is drawn of all these candidates on the basis of the successful completion of the training and merit rating awarded thereat irrespective of the fact as to which of the candidates have been sent and for training in whatever order they are sent in the batches. Consequently the appointments to the posts of Phone Mechanics for which the above screening tests were held shall not be undertaken until steps are taken in accordance with the above direction in Tirupati Telecom. District.

(2) It is however made clear that this direction will not apply to the 5 batches who have already completed the training and will be applicable from the 6th batch onward till the list of candidates is exhausted. It is also clear that it will be open to the official respondents in view of this decision to revise the list of candidates to be included in the 6th batch and further batches if so advised.

(3) The official respondents will be well advised to follow this principle uniformly in all the Districts under the Andhra Pradesh Telecom. Circle wherever such question has arisen.

A copy of this order be forwarded to the Chief General Manager, Telecommunications, A.P. by name for information

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and to consider issuing general directions to all the Telecom. Districts in A.P.Circle.

10. O.992/96 accordingly allowed. No order as to costs.

O.A.No.1007/96 accordingly allowed. No order as to costs.

A copy of this order be separately kept in each O.A. and for the purpose of record each O.A. will be treated as separately decided, disposed of.

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D. Jireh or Day
COURT ATTORNEY
BENZON & CO.
Central Court of Appeal Tribunal
MUMBAI BENCH

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