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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.625 of 1997

DATE OF ORDER: 25th February, 1999

BETWEEN:

1. R.MOHAN,
2. A.LINGANNA,
3. GANGANNA, S/o Narayana,
4. M.A.HAMEED KHAN,
5. GANGANNA, S/o Rajanna.

.. APPLICANTS

and

1. The Telecom District Engineer,
Adilabad,
2. The Chief General Manager,
A.P.Circle, Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad,
3. The Chairman,
Telecom Commission,
New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.K.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWASWARA RAO, Addl.
CGSC

CORAM:

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

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

JUDGMENT

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

Heard Mr.K.Venkateswara Rao, learned counsel for the applicants and Mr.V.Rajeswara Rao, learned standing counsel for the respondents. Notice has been served on the private respondents R-4 to R-8. They were absent.

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2. There are 5 applicants in this OA. They were initially engaged as Casual Mazdoors in the years 1979, 1982, 1983, 1981 and 1982 respectively. Later, the first applicant was appointed as regular Mazdoor in 1983. The 2nd and the 3rd applicants were appointed as Group-D in 1986 and the 4th and 5th applicants were appointed as Telegraphmen in 1988 and 1984 respectively. On 16.10.90, the Department of Telecom proposed restructuring in certain Group-C and D cadres and proposed a new cadre called Phone Mechanic as a restructured cadre for Linemen/Wiremen etc. On 22.7.91, the Department had announced the Recruitment Rules (enclosed as Annexure R-1 to the reply). According to the Recruitment Rules to the cadre of Phone Mechanic, the method of promotion is given in the columns 10 and 11 of the said rules. The promotions as per the Recruitment Rules are to be regulated as follows:-

"50% by seniority-cum-fitness from amongst the Linemen/Wiremen (belonging to the Telecom. Engineering Wing of the Department) who possess 10th standard qualification;

50% through competitive examination from amongst the following cadres belonging to the Telecom. Engineering Wing of the Department, namely:-

(a) Linemen/Wiremen working in the Secondary Switching Area (SSA) Units including those who are non-matriculates.

(b) Regular Mazdoors and Casual Mazdoors working in the Secondary

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Switching Areas (SSA) Units provided they hold 10th standard qualification and have been granted temporary status under the scheme introduced by the Department vide DoT letter NO.269-10/89-STN dated 7.11.89.

Select Panel under this quota will be drawn strictly according to the merit scored in the competitive examination.

Note: (i) Phone Mechanic will be a Secondary Switching Area (SSA) cadre. The unit of recruitment would be the respective Second Switching Area (SSA). The seniority in the cadre of Phone Mechanic will be determined on the basis of post training marks and by rotation of vacancies between the seniority and the competitive examination quota in the ratio of 1:1, starting the cycle with the official selected on seniority basis,

(2) In case adequate number of officials do not become available against the seniority quota of vacancies in a particular year, the balance number of vacancies will be transferred to the competitive examination quota and vice-versa in case of any shortfall in the number of candidates becoming available through the examination quota, the balance vacancies will be transferred to the seniority quota."

3. 37 posts of Phone Mechanic were sanctioned by the Chief General Manager, Telecom, A.P.Circle by his Memo dated 31.10.94. There were already four posts sanctioned by the CGM by memo dated 4.11.93 which were also not filled

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at the time when 37 posts were sanctioned. Thus there were 41 posts in the cadre of Phone Mechanic. The applicants submit that 50% of the 41 posts can only be filled by Walk-in Group and the rest of the 20 posts have to be filled by those qualified in the screening test. The applicants further submit that 30 officials were promoted and appointed as Phone Mechanics against the promotional quota instead of 21 posts. That apart, out of 20 posts earmarked for officials who passed screening test, only 10 posts were filled from among those who passed the screening test. Hence the claim of the applicants for such appointment has not been considered inspite of the fact that they had already passed the screening test as early as in the year 1994 and also successfully completed the training. Thus the applicants submit that the respondents had violated the Recruitments Rules dated 22.7.91 by promoting the Linemen/Wiremen with 10th standard against 30 posts while promoting only 10 officials from amongst those who passed the screening test thereby contravening the prescribed ratio of 1:1. It is stated that the first applicant had been promoted as Phone Mechanic on adhoc basis and continues to be so.

4. This OA is filed praying for ^a declaration that the applicants are entitled for appointment/promotion as Phone Mechanics against 50% posts earmarked to be filled by the officials who had passed the screening test in terms of DoT letter NO.7-5-/90-NCG dated 22.7.91 issued by the Department of Telecommunications communicated by the CGM, Telecom, Hyderabad in Lr.No.TA/RE/32-I/Rlgs/ dated 7.8.91 from the date of creation of posts with all consequential

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benefits of seniority, pay and allowances and other attendant benefits by holding the action of the respondents in promoting/appointing as Wiremen/Linemen with 10th standard to the extent of 30 posts, while promoting/appointing only against 10 posts from those who passed the screening test, is illegal, arbitrary, discriminatory.

5. A reply has been filed in this OA. The respondents admit ~~RR~~ in regard to the issue of the Recruitment Rules dated 22.7.91. They further submit that the competitive examination as prescribed in the Recruitment Rules dated 22.7.91 had been modified as qualifying ~~RRR~~ screening test vide DoT letter NO.27-1/94-TE-II(I) dated 29.3.94 (Annexure R-2 to the reply) ~~RRR~~ allowing non-matric Regular Casual (Temporary Status) Mazdoors, all Group-D staff and Casual Labour (Temporary Status) working in sections other than Telecom, such as, Telegraphic Traffic, Telecom, ⁵ Civil Wing, Accounts etc. Another set of Departmental instructions was issued for preparation of the eligibility list on the same date vide its order 27-2/94-TE-II(I) dated 29.3.94 (Annexure R-3 at page 13 to the reply). Another set of instructions was issued bearing No.232-1/91-BTN(Pt) dated 27.4.94 (Annexure R-4 at page 15 to the reply). According to the second order, the select panel will be prepared by a two stage process, first an eligibility list will be prepared and then a select panel for each year. The eligibility list will be prepared, (i) through Walk-in Group, (ii) through screening test. Both lists will be merged and a common eligibility list will be prepared on the basis of inter-se

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seniority. However, those who are in the lower post will be placed enblock below those who are in the higher scale. Merger of the two groups and issue of another eligibility list is incorporated at Para 3 in the first order. The applicants 2, 3, 4 and 5 had become eligible to appear for screening test of Phone Mechanic by virtue of the order dated 29.3.94 only. The eligibility list in each SSA Units including Adilabad SSA Unit was prepared in accordance with the above instructions. Two screening Tests were conducted in 1994 and 1996. Accordingly posting of Phone Mechanics was ordered. The respondents also brought to the notice of the Bench that 3 OAs namely OA No.1406/95, 49/95 and 1419/96 were disposed of by this Bench with reference to their submissions. The respondents submit that in view of the above, the OA is liable only to be dismissed.

6. The Recruitment Rules dated 22.7.91 were issued under the powers conferred by the Proviso to Article 309 of the Constitution of India. Hence the Recruitment Rules have to be followed without any deviation. If any deviation is made by the executive orders, the executive orders cannot be upheld if there is a violation of the Recruitment Rules framed under Article 309 of the Constitution. However, the respondents have issued three orders dated 29.3.94 (Annexure R-2 to the reply), 29.3.94 (Annexure R-3 to the reply) and 27.4.94 (Annexure R-4 to the reply) violating certain ^{provisions} ~~parts~~ of the Recruitment Rules dated 22.7.91. How far these three executive instructions issued as noted above can be upheld is a point for consideration. Normally, the judicial forum will not accept any violation of the Recruitment Rules unless these

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variances are included in the original Recruitment Rules by modifying the original Recruitment Rules after getting the approval from the competent authority. It appears that 3 executive orders ~~does~~ not appear to have been issued by the order of the competent authority ⁱⁿ ~~as~~ modification of Recruitment Rules dated 22.7.91. Even if those executive orders are approved, a corrigendum should have been issued modifying the Recruitment Rules dated 22.7.91. Such corrigendum has not been produced before us. But the three OAs namely OAs 1406/95, 49/96 and 1419/96 were disposed of by this Tribunal after hearing both the parties. Hence how far the three executive orders issued can be accepted is also a point for consideration in this OA in view of the position as explained above.

7. The three executive orders issued are analysed as below:-

(i) The initial Recruitment Rules dated 22.7.91 clearly stipulate that 50% posts of Phone Mechanic should be through a competitive examination adhering to the qualification indicated under that group. But in the executive order dated 29.3.94 (Annexure R-2 to the reply), the competitive examination has been modified as a qualifying screening test. A perusal of that letter indicates that there were representations from the Staff Association with regard to holding of the competitive examinations for entry into the restructured cadre of Telecom Technical Assistant/Phone Mechanic stating that competitive examination tests mainly prove the academic skills and not the aptitude of the person to assimilate new

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technology. It is further stated in that letter that the competitive examination is acting as a disincentive to the staff to move over to the restructured cadres. In view of the representations of the Staff Associations, the Department had modified the selection on the basis of the competitive examination to that of qualifying screening test.

Lowering down of the competitive examination to that of qualifying screening test will definitely be of help to the staff ^{who} ~~be~~ aspire to become Phone Mechanics as passing the screening test is easier ~~as~~ compared to passing of the competitive examination. The learned counsel for the applicants submits that the Recruitment Rules dated 22.7.91 should be adhered to fully; but the competitive examination as stipulated in the Recruitment Rules dated 22.7.91 should only be modified as qualifying screening test. From the above submission, it appears that the applicants want the cake and eat it too i.e, they want to retain 50% of the posts exclusively for them but competitive examination prescribed should be watered down ^{to} ~~as~~ the screening test. Either the Recruitment Rules dated 22.7.91 are fully followed or executive instructions issued thereafter are adhered to. Hence it is to be seen whether the issue of the subsequent instructions can be followed or not. No doubt, the letter dated 29.3.94 modifying the competitive examination to that of qualifying screening test is welcomed even by the applicants herein.

(ii) In the second order dated 29.3.94 (Annexure R-3 to the reply), two stages, namely, preparation of eligibility list and select panel for each year has been

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indicated. Para 3 of that letter is very relevant which gives necessary instructions for fixing inter-se seniority between the walk-in group and the group selected through screening test. This para reads as below:-

"3. As per the above conditions, a walk-in list will be prepared. Then, separate list of officials who qualify the screening test will also be prepared. Both the lists will be merged and a common eligibility list arrived at, on the basis of inter-se seniority in their respective existing cadres under the extent rules, after calling for options of employees with regard to their willingness to move over to the restructured cadres. The eligibility list will not have any relation to the actual number of posts available in these cadres. Out of the eligibility list, select panel will be cast, the number of officials on the panel being limited to the posts available in the restructured cadres in a particular year which will be worked out based on existing instructions. Empanelled officials as per this scheme will be sent for training and absorbed in the new cadres after successful completion of the prescribed training."

It is not necessary to further explain the above para as the wording of that para is very clear.

(iii) In the executive order dated 27.4.94 (Annexure R-4 to the reply) once again the preparation of the eligibility list and select panel for restructured cadre in Group-C has been explained. In this order para 2

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i.e, preparation of eligibility list is necessary to be noted. This para reads as below:-

2. Preparation of eligibility list

General guidelines in this connection have already been issued under this office OM No.27-2/94-TE-II(I) dated 29.3.94 and OM No.27-2/94-TE-II(II) dated 29.3.94 copies of which are placed as Annexures A and B. The general guidelines, therefrom, are being reproduced below in order to make an eligibility list and select panel of the candidates to be drafted for training against the posts of restructured cadres.

(i) Options will be called for from the prospective officials seeking their absorption in restructured cadres.

(ii) Identify, from these volunteers, the candidates who form part of the Walk-in Group.

(iii) Qualifying Screening test will be conducted for the eligible volunteers who do not form part of the walk-in Group.

(iv) Eligibility list will be prepared for each SSA from Walk-in Group officials and the officials selected through qualifying screening test i.e, the officials who hold the requisite qualification prescribed and those who pass the qualifying examination. While preparing the eligibility list the officials of Walk-in Group and those who passed the qualifying examination will be merged based on their inter-se seniority

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in a particular grade. Those who are in the lower pay scale will be placed enbloc below those who are in the higher pay scale.

(v) Yearly select panel will be prepared from the eligibility list limited to the number of posts created in the SSA/Telegraph Division.

(vi) The candidates are to be drafted for training against the restructured cadres as per the select panel made above."

8. A perusal of the above 3 executive orders shows that they are not in tune with the initial Recruitment Rules dated 22.7.91. The variances are (i) competitive examination is modified to that of Screening test; (ii) allocation of Phone Mechanic posts in the ratio of 1:1 for the Walk-in Group and the examination group is not adhered to in the orders dated 29.3.94 and 27.4.94. ^{while} By fixing interse seniority as stated in those two letters, adherence of 1:1 for the above two Groups has been nullified. In view of the above variance, whether those orders can be allowed for conducting the Phone Mechanic selection, is to be considered.

9. The applicants themselves have no objection for modifying the competitive examination to that of screening test as this is helpful to them in getting promoted and posted as Phone Mechanics easily. Hence the applicants strongly advocate the retention of the screening test instead of subjecting them to the competitive examination.

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10. OA 49/96 was filed in which an interim order was passed on 25.1.96. The interim order reads as below:-

"Until further orders in this O.A. the integrated seniority of those who passed in the qualifying examination at different times, shall not be prepared."

But that OA had become infructuous and hence dismissed as infructuous by the order dated 10.6.98.

11. Another OA 1406/95 was filed on the file of this Bench in regard to the inter-se seniority. The prayer in that OA was not clear. However, the respondents produced the letter No.TA/STB/16-1/KW/II dated 20.5.94 enclosing a copy of the letter dated 29.3.94. Para 3 of the letter dated 29.3.94 which has been extracted in para 7(ii) above was taken note of and it was held that there ^{was} ~~is~~ no need to go into the merits of that case as ^{the} ~~the~~ seniority dispute has been resolved by the respondents themselves. The seniority dispute has been accepted by the applicants in that OA as there was no review or appeal to that judgment and that judgement [§] had become final.

12. Another OA viz, OA 1419/96 was filed on the file of this Bench questioning the withdrawal of the letter dated 11.7.96. However as OA 49/96 was dismissed as infructuous due to withdrawal of the letter dated 11.7.96 and thus that had become final, that OA was disposed of noting above observations by the order dated 22.9.98. Thus all the three OAs filed in connection with the conduct of the competitive examination for the 50% quota and

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preparation of the seniority list by Walk-in Group as well as examination Group had been examined on the earlier occasions in the three OAs referred to above which were filed on the file of this Bench. In OAs 49/96 and 1406/95, Mr.K.Venkateswara Rao was the counsel for the applicants. He is also the counsel for the applicants herein. When the substantial question of deviation from the initial Recruitment Rules dated 22.7.91 had been accepted by the applicants in those two OAs represented by Mr.K.Venateswara Rao, the same counsel cannot now question those executive orders in this OA on the ground that those executive orders are violative of the Recruitment Rules dated 22.7.91. While arguing the earlier cases the applicants and their counsel definitely had made note of the variances. When

orders in those OAs have become final, it is to be held that variance has been seen by every one and hence they accepted the final disposal of those OAs. There were no challenge to those orders nor any review petition was filed to review the judgment in those OAs.

13. The executive orders are partially beneficial to the applicants and partially against the applicants. When they accepted the beneficial ^{part of the} instructions of the executive orders, they cannot question the other ^{part of the} orders which are not beneficial to them. Either they should accept ^{in toto} ~~fully~~ the initial Recruitment Rules dated 22.7.91 or they should accept the executive orders to be read in conjunction with the Recruitment Rules. As the screening test was in their favour and as the inter-se seniority dispute has ^{d.} been adjudicated and accepted by them through their counsel Mr.K.Venteswara Rao, it is to be observed that the majority

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of the employees in the Department are benefited by the executive instructions to certain extent which are in contravention of the Recruitment Rules dated 22.7.91. As the Recruitment Rules read along with the executive orders are favourable to the large section of the employees, it is not advisable to set-aside the executive orders and follow fully only the initial Recruitment Rules dated 22.7.91. If the executive orders are now set aside and direction is given to follow the original Recruitment Rules dated 22.7.91 fully then such a direction at this juncture will cause considerable inconvenience to the applicants in the already disposed of OAs and similarly placed employees. Hence such a direction cannot be considered as proper and appropriate direction in this OA. *The executive instructions are also not challenged.*

14. Even if the executive instructions are not set aside for the vacancies which were filled so far, the respondents should take immediate action to ^{amend} ~~modify~~ the Recruitment Rules dated 22.7.91 to incorporate the subsequent executive orders and issue a comprehensive Recruitment Rules approved by the competent authority. The modification ^{to} ~~in~~ the Recruitment Rules dated 22.7.91 as observed above should be initiated forthwith and any further Recruitment to the post of Phone Mechanic that takes place hereafter should pend till the ^{amended} ~~modified~~ recruitment rules are issued.


15. In the result, the OA is dismissed. The respondents are directed to initiate proceedings in regard to the promotion/appointment to the post of Phone Mechanic for the vacancies that arise after issue of this judgement


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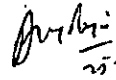
only after modifying the Recruitment Rules dated 22.7.91
incorporating the three executive orders dated 29.3.94,
29.3.94 and 27.4.94.

16. o No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
25/2/99


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED : 25th February, 1999


25/2/99

vsn

21/3/99

Ist and IIInd Court.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE A. RAJENDRA PRASAD
MEMBER (A)

THE HON'BLE R. RANGARAJAN
MEMBER (A)

THE HON'BLE MR. S.S. JAI PARAMESHWAR:
MEMBER (J)

DATED: 25/2/99

ORDER/ JUDGMENT

M.A. / R.A. / C.P. NO.

IN: 625/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

7 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
17 MAR 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH