

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.750/99

DATE OF ORDER : 09-2-2000

Between:-

J.Panduranga Rao

...Applicant

And

1. The Chief General Manager, Telecom, AP Circle, Hyderabad.
2. The General Manager, Dept. of Telecom, Telecom Dist., Vijayawada.
3. The Executive Engineer, Telecom Electrical Division, Vijayawada, Office of Telecommunication, Renuka Complex, II nd Floor, Chuttugunta, Vijaywada-2.

...Respondents

COUNSEL FOR THE APPLICANT : Shri K.Lakshminarasimha

COUNSEL FOR THE RESPONDENTS:Shri V.Rajeshwar Rao, Addl.CGSC

CORAM:

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

THE HON'BLE MR.S.MANICKA VASAGAM : MEMBER (A)

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

..2.

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The applicant in this OA is challenging the action of the respondents in cancelling his promotion to the post of Sr.TOA (G) by the impugned order No.E.242/Sr.TOA(G)/ST.TRG/98-99 dated 15-4-1999. The applicant pleads that no notice had been given to him prior to issuing the impugned order cancelling his promotion and no reasons were cited for such cancellation. The applicant further states that he belonged to Telecom Engineering Branch and that is why he was permitted to appear at the screening test and later promoted as Sr.TOA(G). The question of his eligibility was not at issue at any point of time, according to the applicant. The impugned order also did not contain any reason except that it was stated in the order that the persons belonging to Civil/Electrical were not eligible for the restructured cadre posts on the Engineering side. Further, according to the applicant, the impugned action was not substantiated by pointing out any rule or regulations or guidelines which provided for the exclusion of the officials belonging to Civil/Electrical sides. The applicant further states that he was appointed in the Telecom Engineering Branch on 7-1-1988 and that restructuring was introduced in Telecom from 9-9-1992.

2. From the submissions made before us by the learned counsel for the applicant, it emerges that the impugned order is mainly challenged on three grounds that:(i)no notice was served upon the

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applicant why his promotion was sought to be cancelled; (2) no reasons for cancellation were mentioned in the impugned order that there was no ineligibility on part of the applicant which could preclude him from continuing in the promoted post. (3) Further according to the applicant since he had successfully passed the screening test and was consequently sent for training, no legality could be ~~attributed~~ ^{confined} to the impugned order of cancellation.

3. In the impugned order dated 15.4.1999, it is stated that only Group-C officials of Telecom Engineering Branch were eligible for TTA post as per TTA Recruitment Rules. The guidelines for eligibility as set out in the order dated 6-6-1994 appearing at Annexure-III (page-11 to the OA) are as follows :-

1. Options will be called for from the prospective officials seeking their absorption in restructured cadres.
2. Identify, from these volunteers the candidates who form part of the Walk-in Group.
3. Qualifying screening test will be conducted for the eligible volunteers who do not form part of the walk in Group.
4. 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 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.
5. Yearly select panel will be prepared from the eligibility list limited to the number of posts created in the SSA/ Telegraph Dvn.
6. The candidates are to be drafted for training against the restructured cadres as per the select panel.

3.QUALIFICATIONS: of candidates for selection to impart training against restructured cadres:

I. Phone Mechanic:

a. Qualification for Walk-in group candidates.

i. All linemen/Wiremen including OTBP/BCR (Belonging to Telecom Engineering wing of the department) who are Matriculates.
ii Cable splicers.

b. Eligibility conditions for appearing in qualifying screening test.

i. Linemen/Wiremen including OTBP and BCR who are non Matriculates.

ii. Regular Mazdoors.

iii. All Group-D staff of Telecom Engg. Wing.

iv. Casual Mazdoors with Temporary Status.

v. All Group-D/Casual labour (with Temporary Status) working in Sections other than Telecom. Such as Telegraph Traffic, Telecom Civil Wing Accounts etc.,

4. The guidelines being quite eloquent and un-ambiguous, there could be no mis conception in the mind of the authorities regarding eligibility criteria and therefore we are at a loss to appreciate how on the ground of eligibility, the applicant's promotion could be cancelled at this stage. On page-15 of the OA, the particulars of eligible candidates are mentioned, which includes the name of the applicant at Sl.No.2. At page-18 (Annexure-V to the OA) the particulars of the candidates declared qualified in the Departmental supplementary qualifying Screening test for Recruitment of Sr.TOA held on 22.12.1995 are mentioned, which also includes the name of the applicant at Sl.No.161. At page-19 (Annexure-VI to OA) appears the particulars of the officials included in the eligibility list of Sr.TOA (G) and who were deputed for Phase-I training and directed to report to Sub ~~Sub~~ Divisional ~~Engineering~~ Training, Co-ordination Training Centre at



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Vijayawada on 18-11-1996 by 9.15 am. These particulars also include the name of the applicant at Sl.No.21.

5. At Annexure-VII (page-20 of the OA) appears a communication dated 28-1-1998 issued by the Office of the General Manager, Telecom District, Vijayawada giving particulars of the appointment in the cadre of Sr.TOA(G) consequent on delinking of restructured cadre post in respect of OTBP/BCR officials of the basic cadre. In the opening paragraph of the said letter dated 28-1-1998 it is stated that after successful completion of training for Sr.TOA (G), the officials mentioned in the annexure to the said letter were appointed in the newly restructured cadre of Sr.TOA(G) with effect from the dates mentioned against their names in the pay scale of Rs.4,000-100-6000. It is further stated in the said communication that the officials may exercise option within one month from the date of receipt of the communication for fixation as per the instructions contained in the G.I, M.H.A.Dept. of Per & A.R. OM No.E-7/1. 88-ESTT/PI dated 26-9-1981 (Annexure-VII page-20 to the OA). The annexure giving particulars of the officials who had successfully completed 4 weeks prescribed training for Sr.TOA (G) is annexed to the said communication dated 28-1-1998 ^{which} includes the name of the applicant at Sl.No.80.

6. It becomes abundantly clear from the above facts that a good deal of application of mind had been gone into before promoting the applicant along with others to the post of Sr.TOA(G) leaving no scope for any error on part of the department which could produce any adverse effect on the eligibility of the applicant for promotion.

⁴ Even if it is accepted that any error was committed, the respondents

have failed to spell out the error either in the impugned order or in the reply affidavit filed in this O.A. The ground of error therefore cannot be allowed to be taken by the Respondents for cancelling the promotion of the applicant.

7. According to the Respondents, the applicant was appointed as Telecom Office Assistant (TOA for short) on 7.1.1988 on compassionate grounds. The applicant when appointed in 1988 was designated as L.D.C. Subsequently based on the request of the Unions, the cadre of L.D.C. was converted in the office of CGMT into TOA pattern. This was done with effect from 9.9.1992. Further, according to the respondents, the applicant who was recruited as L.D.C. initially was allotted to the Civil Wing and subsequently converted as TOA as per the policy of the Department and that he would be eligible for promotion as Sr.TOA against 65 posts sanctioned to the Civil Wing. The C.E.(Civil) had to examine the case as per seniority and that he would be promoted as Sr.TOA if he was falling within the zone of consideration as per posts sanctioned to Civil Wings in February, 1999.

8. Further, according to the Respondents, the applicant was initially appointed as L.D.C. on 7.1.1988 and later converted as TOA as per the policy of the Department in 1995 and that this concession was made effective with effect from 9-9-1992 and therefore as stated in para-6 of the counter affidavit that the applicant was erroneously promoted as Sr.TOA without examining his case properly since the applicant was working in the Unit of Civil Wing and not under the GMTD VJ and therefore according to the respondents, as per the instructions conveyed by the CGMT office, the appli-

cant was reverted and posted as TOA. It is further clarified in the said paragraph that based on the sanctions issued by the CGMT office, in the cadre of Sr.TOA to the Civil Wing Unit, the case of the applicant for promotion to the cadre of Sr.TOA would be examined and he would be appointed as Sr.TOA in the Civil Wing accordingly.

9. The submission made by the learned counsel for the applicant that he belonged to Engineering Unit, though not correct, it is also not digestable how it escaped the attention of the Department that this benefit was to be confined to Engineering Unit only and it was not to be extended to the Civil and Electrical Wings; because at every relevant stage the Department was not un-oblivious of the fact that the applicant was attached to the Civil Wing. This is evident not only from the material ^{pages} ~~pages~~, being Annexure R-2 dated 16-3-1994, produced by the Respondents but also from the material papers produced by the applicant being Annexure-VII (page 23 to OA), item 80 last column, in which it is stated that the incumbent (applicant) was working in the Civil Wing; Annexure-VI page-19 to the OA; Annexure-IV page-15; Annexure-2 page-10 etc.,.

10. Notwithstanding the above situation, it cannot be denied that the TOA Pattern in the electrical cadre in the Civil Wing was extended in 1994 by the proceeding dated 16-3-1994 (Annexure R-2 to reply affidavit) and that the cadre of TOA of Civil Wing was a separate Unit and that the TOAs working in the Civil Wing had a separate gradation list and therefore the stand taken by the Respondents, as stated in para-5 of the Counter Affidavit, - - -

reproduced below, cannot be overlooked :

5. It is therefore submitted that to the extent of posts sanctioned in Sr.TOA cadre same have been filled up as per the select panel of the concerned unit. The case of sanction of Sr.TOA posts in respect of Civil Wing has been examined by CGMT office and vide its order dated 17.2.1999, 65 posts of Sr.TOAs have been sanctioned to the CE Civil unit of AP Telecom Circle. Copy of the order is enclosed as Annexure R1, for kind perusal of the Tribunal. Applicant, who is recruited as LDC initially, was allotted to the Civil Wing and subsequently, converted as TOA as per the policy of the department. He will be eligible for promotion as Sr.TOA against these 65 posts of sanctioned to the Civil Wing. The CE (Civil) will examine ~~his~~ this case as per the seniority and he will promote him as Sr.TOA, if he is coming within the zone of consideration as per posts sanctioned to Civil Wing Unit in February, 1999.

11. In view of what is stated above, inspite of the applicant's case being very strong, it would be unjust and improper on our part to deny the Respondents, ^{the opportunity} to rectify the error which appears to have been bonafide committed by the Respondents without any malice towards the applicant and, ^{therefore} we feel constrained to disallow this OA. However, with a specific observation that the Respondents shall live up to ^{stated} the assurance as categorically, ^{stated} in the concluding parts of paras 6 and 7 of their counter affidavit.

12. Subject to what is stated above, the O.A. is dismissed.

No costs.

S. Manicka Vasagam
(S. MANICKA VASAGAM)
Member (A)

D. H. Nasir
(D. H. NASIR)
Vice-Chairman

Dated: 09th February, 2000.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HON. J.
2. HON. M. (ADMN.)
3. HON. M. (JUDL.)
4. D.R. A (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H.NASIR
VICE CHAIRMAN
THE HON'BLE MR. R. RANGA RAO
MEMBER (ADMN.)

THE HON'BLE MR. B.S.JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 9/2/00

MA/RA/SPR NO.

IN

OA. NO. 750/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

8 colts

केन्द्रीय प्रशासनिक बिधिकरण
Central Administrative Tribunal
DESPATCH / DESPATCH

15 FEB 2000

HYDERABAD BENCH