

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.
T.A. No.

85/99

200

DATE OF DECISION

Laxmi Prasad Sharma & Others

Petitioner

Mr. S.P. Mathur

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. B.N. Sandu

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. ~~Justice~~ G.L. Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Member (Administrative)

(A.P. Nagrath)
Member (A)

(G.L. Gupta)
Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

CA 85/99

DATE OF ORDER: 25.4.2003

1. Laxmi Prasad Sharma son of Shri C.B. Sharma
2. On Prakash Ghiya son of Shri Ram Niwas
3. Avadh Benari Mathur son of Shri Guru Prasad Mathur
4. B.P. Pant son of Shri D.D. Pant
5. Lekh Singh Rathore son of Shri M.S. Rathore

..... Applicants

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. The Chief General Manager (Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.

..... Respondents.

Mr. S.P. Mathur, Counsel for the applicant.

Mr. E.N. Sandu, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Member (Administrative)


ORDER

PER MR. A.P. NAGRATH

The applicants, who are five in number, have filed this OA seeking direction to the respondents to consider them for absorption as JTO, treating them at par with other technically qualified categories. They have also challenged the vires of clauses (a) & (b) relating to 35% transfer/promotion quota, as stated under Note 4 in Scheduled to 'JTO Recruitment Rules-1996' which does not include the category of Telecom Technical Assistants to which the applicants belong. Further, they have also made a prayer that the respondents be directed to permit them to appear in the Screening test which was scheduled on 11.4.1999.

2. When the matter was taken up for hearing, it was stated before us at the Bar that the applicants had appeared in the Screening test for absorption as JTOs and four of them have duly qualified and have also been absorbed against the recruitment year of 1998. The fifth applicant, Mr. Lekh Singh Rathore, has not been absorbed for want of vacancy.


3. The facts, as per the applicants, are that they were initially appointed on the post of Mechanic/Technician on various dates from 1970 to 1979. It is averred that Ministry of Communication vide letter dated 16.10.1990 restructured the cadres and declared the categories of Lineman, Wireman, Cable Splicer, Technician, Transmission Assistant, Wireless Operator, Auto Exchange Assistant, Phone Inspector as dying categories. New cadres created were (i) Phone Mechanic (ii) TTA (iii) S r. TOA. It is stated that the applicants have completed training for ten weeks for category of TTA and were posted as TTA on 19.4.1996. The applicants claim that they are better qualified than TA/PI/AEA/Wo but were not being sent for training for JTO while the staff in these categories are being sent directly for the said training. It has been alleged that JTO Recruitment Rules of 1996 discriminate against the category of TTA to which the applicants belong, as the staff in categories of TA/AEA/WOs who possessed the qualification prescribed in column of the Recruitment Rules have been permitted direct absorption as JTO after completing five years of regular service but the applicant are ignored though they possess the same qualification. Their plea is is that clauses (a) under Note 4 to the Scheduled to the Recruitment Rules of 1996 is discriminatory in so far as rightful claim of TTAs is concerned and deserves to be amended to bring TTAs at par with other technical categories.



4. The respondents, in their reply, have stated that multiple litigation had arisen on this aspect before various Benches of CAT. Taking into view this fact, the department had decided that all TTAs as on 31.8.1999 be permitted provisionally to appear in Screening test against 35% quota without insisting on six years of service in the cadre of TTA but subject to the outcome of the OAs pending before different Benches. It has also been brought on record that Recruitment Rules of 1996 have since been superseded and new Recruitment Rules of 1999 have been promulgated. These have been published in the Gazette of India (Extraordinary) on 31.8.99. The ~~concept~~ of 'Walk in' category has been done away with in these rules.

5. The learned counsel for the applicants, while conceding that four of the applicants have been absorbed in the category of JTOs, strenuously argued that full justice has not been meted out to the applicants. He contended that those granted benefit of 'walk in' interview have been absorbed against the vacancies of 1997 whereas the applicants have been absorbed against the vacancies of 1998 as is apparent from the order dated 8.2.2002 shown to us. His plea was that this has happened because of discrimination caused to the category of TTAs by Recruitment Rules of 1996. He argued at length to make out his case that Clauses (a) & (b) under Note 4 of the Schedule to the Recruitment Rules of 1996 cannot stand scrutiny of law as there is hostile discrimination against the category of TTAs. He forcefully argued that these rules be declared illegal and the respondents be directed to modify the same by including the category of TTAs under Clause (a).

6. The learned counsel for the respondents brought to our notice the fact that the same matter had come up for consideration



In the Writ Petitions Nos. 14183 & 14184 of 2001 in Madras High Court against the order of Madras Bench of the Tribunal and the Hon'ble High Court in their decision dated 06.02.2002 had upheld the validity of the Recruitment Rules of 1996. Order of the Madras Bench of CAT, whereby the OA filed by TTA seeking exactly the same relief (as in the instant case) was allowed, were set aside.

7. We have carefully considered the rival contentions. It is now not in dispute that four of the applicants have also been absorbed as JTOs and allotted recruitment year 1998. The only point which survives for our consideration is whether clause (a) under Schedule to the Recruitment Rules of 1996 could be construed as violative of Article 14 of the Constitution. We have perused the judgement of Hon'ble High Court of Madras and we find that these very provisions have been discussed in that order exhaustively and it has been held that exclusion of graduates Telecom Technical Assistants from Clause (a) cannot be, in the circumstances, be regarded as violative of Article 14 of the Constitution of India. Detailed reasoning has been given in Paras 8 to 14 of that order and we find absolutely no reason to take any different view in the matter. We do not consider it necessary to reproduce all these paragraphs from that judgement. It is sufficient to extract Paras 13 to 15 which are reproduced below:-

"13. While at first sight these facts would give an impression that injustice has been done to the graduate TTA by excluding them from 'walk in category' of Clause (a), a closer examination would show that the exclusion of that cadre from clause (a) has not resulted in such discriminatory treatment as would warrant striking down of the rule itself. As already mentioned, graduate Technician who could only compete for the 15% promotional



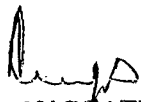
quota along with others though after they became TTAs, are excluded from entering that competition under the 1990 Rules, have become eligible for consideration for promotion under 35% quota subject to their passing the qualifying screening test.

14. When the 1996 Rules were framed the cadre of TTA had been in existence only for two years, and it could not have been possible to include the cadre of TTA as five years' service in the cadres was stipulated for all the cadres in clause (a). It would have been, prima facie, an unequal prescription to require five years regular service in the cadre for the other posts mentioned in Clause (a) but require lesser number of years in the cadre of TTA had it been included in Clause (a). Although it may have been desirable to provide some weightage for the graduate TTAs when compared to those among ~~who~~ who are merely matriculates, having regard to the time at which that the Technicians who became TTAs had been accorded under the 1990 Rules, the exclusion of graduate Technical Assistants from Clause (a) cannot, in the circumstances, be regarded as violative of Article 14 of the Constitution of India.

15. Under the Rules of 1999, graduate TTA have been included in the class eligible to take the limited departmental competitive examination alongwith the graduates along with the holders of other posts mentioned in the Rules. The concept of 'walk in category' has been done away with and rightly under the 1999 Rules."

8. In view of the discussions in the preceedings paragraphs and the judgement of Madras High Court, with which we find ourselves in respectful agreement, we pass the following order:-

"The applicants had already appeared in the Screening test for the post of JTO and four of the applicants have been absorbed as JTOs. No further directions are required to be given on this aspect. In so far as challenge to the provisions in clauses (a) & (b) of Note 4 under Schedule to the Recruitment Rules, 1996 is concerned, the applicants have failed to make out any case in their favour. The OA is dismissed, but with no order as to costs."


(A.P. NAGRATH)
MEMBER (A)


(G.L. GUPTA)
VICE CHAIRMAN