

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JATPUR BENCH, JAIPUR.

OA No. 135/2001

DATE OF ORDER: 31.5.2002

Hari Ram Gupta son of shri Nank Ram Gupta by caste Gupta aged 34 years. Resident of E-8, Madhuban Colony, Jaipur presently working as Sr. TOA(P) in the office of the SDE, Sanganeri Gate, Jaipur.

....Applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Bhartiya Sanchar Nigam, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Chief General Manager, Department of Telecom (BSNL), Rajasthan Circle, Jaipur.
3. Principal General Manager (BSN), Jaipur District, Department of Telecom, Jaipur.

....Respondents.

Mr. P.N. Jatti, Counsel for the applicant.

Mr. R.L. Agarwal, Counsel for the respondents.

CORAM

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

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

The applicant had appeared for the selection to the post of JTO against 15% quota held on 15 & 16th May, 1999. In this examination, there are four papers 'A', 'B', 'C' and 'D'. He qualified papers 'A', 'C' and 'D' but in Paper 'B' he obtained only 37% marks. In other words he was short by 3 marks in this Paper and as such he could not be selected. The applicant had filed a representation dated 30.1.2001 (Annexure A/1) and made a request, inter-alia, that be granted three grace marks, keeping in view the existing

policy of the department. This representation has still not been disposed of, as contended by the learned counsel for the applicant.

2. We have heard the learned counsel for the parties. The entire claim of the applicant is based on the instructions issued by letter dated 20.6.1994 (Annexure A/6). These instructions provide inter-alia that in respect of such candidate who secured minimum pass percentage marks in all other papers except in which he has failed, benefit of grace marks in a single paper upto 3 marks can be given. These instructions applied to the examination held since 1993. This consideration is subject to the condition that this will not be applicable to examination with objective type papers.

3. The learned counsel for the respondents opposed the contention of the other side by saying that the instructions contained in letter dated 20.6.1994 are mere guidelines and are not enforceable legally. While referring to a judgement of the Apex Court, AIR 1988 SC 162, The State of UP vs. Rafiquiddin & Others, he submitted that the legal position decided by the Supreme Court was that department was competent to fix the bench mark by providing certain minimum qualifying marks and every competing individual has necessarily to clear the bench mark for coming out successful. No individual can be given any concession/relaxation, if he has not obtained the minimum prescribed marks.

4. We have carefully considered the rival contentions and have gone through the contents of letter dated 20.6.94 (Annexure A/6). The relief claimed by the applicant is solely dependant on the contents of this letter. There is no doubt in the legal proposition that administrative instructions cannot supplant statutory rules and cannot give a meaning to the rules which the original rules/ policy did not intend.

But then it is also the legally accepted position that administrative/ clarificatory instructions, which are not contradictory to the basic policy and the rules only supplement basic statutory rules and take shape of basic policy itself. These become equally enforceable as the original policy itself. In the case before us, the necessary condition to qualify is that one must obtain 40% marks in each of the four papers. But, in a situation where an individual has obtained more than 40% marks in three out of four papers but is falling short in one paper only by three marks, the instructions provide granting grace marks upto a maximum of three in such a situation. In other words, if a particular individual has cleared three papers by obtaining prescribed qualifying marks of 40% and in Fourth paper, he has obtained less marks, then he can be considered as having qualified, if has got 40% marks, by granting three grace marks. There is a further condition to this that these grace marks, upto a maximum of three, can be given only if the examination is not objective type. In this background, we are of the considered opinion that this concession becomes a part of the policy and cannot be construed to be violative of the original policy. If we were to go by the views of the learned counsel for the respondents that the instructions contained in letter dated 20.6.94 are not legally enforceable then it would create a situation that discretion would lie with the authorities of the department to grant this benefit selectively. Such a position is simply not accepted and can lead to use of selective discretion which would cause ~~inquiry~~ ^{injury} to the right of some persons. This is definitely not the intention of instructions contained in the letter dated 20.6.1994. These instructions have taken the shape of integral part of the policy in regard to the examination for the post of JTO against 15% quota and are thus legally enforceable.

5. Keeping in view the discussion aforesaid, we dispose of this OA with a direction to the respondents to consider the representation of the applicant dated 30.1.2001(Annexure A/1) and decide the same within a period of one month from

the date of receipt of a certified copy of this order. While doing so, the competent authority shall consider whether the examination under question was objective/descriptive type. If the examination is found to be descriptive type, then the benefit of three marks shall be extended to the applicant. The decision, so arrived at, shall be communicated to the applicant within two weeks thereafter. No costs.

J.K. Kaushik

(J.K. KAUSHIK)

MEMBER (J)

A.P. Nagrath

(A.P. NAGRATH)

MEMBER (A)

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