

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No.705/2001  
&  
Original Application No. 706/2001

Jabalpur, this the 21st day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Member (J)

OA No. 705/2001

Molairam Kahar s/o Sh. Magan Ram,  
Aged about 55 years,  
Phone Mechanic,  
Office of Sub Divisional Officer,  
Phone-III, Rewa.

...Applicant

OA No. 706/2001

Rajbhan Jaiswal s/o Sh. Magal Prasad,  
Aged about 53 years,  
Phone Mechanic,  
Office of Sub Divisional Officer,  
Phone-III, Rewa.

...Applicant

(By Advocate: Shri S.K. Nagpal)

-versus-

OA No. 705/01 & 706/01

1. Union of India through  
Secretary,  
Ministry of Communications,  
Deptt. of Tele-communications,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.
2. Chief General Manager,  
Telecommunications,  
M.P. Circle, Bhopal.
3. Telecom Distt. Manager,  
Rewa.
4. Telecom Distt. Manager,  
Satna.

...Respondents

(By Advocate: Shri P.Shankaran)

O R D E R (ORAL)

By Madan Mohan, Member (Judicial)-

Since the facts and issue involved in both these  
O.As and also the prayer made by the applicants are identical

we are disposing of both these O.As by this common order.

2. The relief claimed in both these OAs is to the effect of quashment of order dated 17.10.2001 passed by the respondents (A/1 in both OAs) vide which the applicants have been reverted from the post of Phone Mechanic to S.I.(O) Phones.

3. The brief facts of the cases are that the applicants are employed in the Department of Telecommunication as Phone Mechanic in the pay scale of Rs. 4500-7000 and are on deputation with Bharat Sanchar Nigam Limited. They were initially appointed as Linemen in 1969 and were promoted under O.T.B.P. as S.I.(O) Phone in the year 1985. They were approved by the D.P.C. held on 7.8.1992 for promotion to the post of Telephone Mechanic and were sent for training. They were promoted to the post of Telephone Mechanic by orders dated 31.5.1994 and 27.2.1993 respectively. Since then the applicants have been performing their duties as Phone Mechanic efficiently and sincerely. It is surprising that both the applicants, who had rendered more than a decade and gained experience by virtue of their duties as Phone Mechanic, have been reverted to their previous post i.e. S.I.(O) for want of requisite qualification of education, S.I.(O)/that too without serving any show cause notice on them. The said order of reversion is, therefore, bad in law and deserves to be quashed. Hence, the present O.A. has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for the parties.

4. It is argued on behalf of the applicants that the applicants were considered for promotion to the post of Phone Mechanic by the D.P.C. in accordance with the recruitment rules notified on 22.7.1991 (A/3) existing at the time of selection. According to the said recruitment rules the qualification required for the post of Phone Mechanic was '10th standard qualification' which the applicants were possessing, hence they were rightly promoted to the post of Phone Mechanic.

5. In reply, the learned counsel for the respondents argued that respondent no. 1 issued a clarification vide its order dated 3.9.1993 (R/1) to the effect that the term '10th standard qualification' used in the recruitment rules of Phone Mechanic may be taken as pass in 10th standard (examination conducted by the Board of Education) or its equivalent. However, before receipt of this clarification order, the applicants had already been sent on training and were subsequently promoted. He further argued that the anomaly of non-fulfilling of qualification by the applicants for promotion to the post of Phone Mechanic was left un-noticed for quite some time. But when point was raised by some of the aggrieved employees and on verification of the record of the applicants it was found that they possessed only 10th standard (Non-matric) in school level and had not passed through Board of Examination, the matter was considered at the highest level and asked the applicants to produce their 10th passed certificate from the Board of Examination. But the applicants failed to produce the same. Hence, the impugned order of reversion of the applicants to the post of S.I.(O) was passed in accordance with rules and no irregularity or illegality has been committed.

6. In reply to the arguments advanced by the respondents the applicants' counsel further argued that they had never claimed that they had passed 10th Board Examination. In fact there was no 10th Board examination in Madhya Pradesh at the time of initial appointment of the applicants. There was Higher Secondary Board Exam (11th standard). Hence the question of production of 10th passed examination from the Board does not arise at all. It is further argued that the respondents have violated the principles of natural justice by not issuing any show cause notice before passing the impugned reversion order.

7. After hearing the learned counsel for both the parties and having perused the material on record carefully, we find

from the relevant recruitment rules existing at the relevant time that the required qualification was 10th passed which the applicants were possessing at that time. They had never claimed that they had passed the 10th standard examination from the Board of Education. Moreover, there was no Board for 10th pass examination but there was higher secondary Board exam (11th Standard). The respondents have also in their reply to para 5.5 admitted this fact but their contention that the applicants had passed 10th standard examination at school level and not 10th standard examination of the Board which cannot be treated as Matriculate is not acceptable and is rejected. As regards the clarification issued by the respondent no. 1 vide its letter dated 3rd September, 1993 about the qualification, the said clarification cannot be applicable retrospectively in the case of the applicant in O.A. No. 706/2001 as he was promoted to the post of Phone Mechanic on 27.2.1993. However when the respondents were well aware of the aforesaid clarification before promoting the applicant in O.A. No. 705/2001 and they have not taken any action in this regard, they cannot take advantage of the same at this belated stage. In this regard, the Hon'ble Supreme Court in case of Buddhi Nath Chaudhary & Ors. vs. Abahi Kumar & Ors., reported in (2001) 3 SCC 328 has held that "Service law-appointment- Improper appointment - Interference with - Held, appointment made long back pursuant to a selection need not be disturbed." Since the applicants have worked as Phone Mechanic for a long period of time i.e. for more than ten years, they have necessarily gained much experience on the post and in view of the decision of the Hon'ble Supreme Court in the case of Buddhi Nath Chaudhary (Supra) their promotions need not to be disturbed at this stage.

8. Having regard to the observations made above, we set

aside the impugned order dated 17/10/2001 (Annexure A-1). The original Applications Nos. 705/2001 & 706/2001 are accordingly allowed with no order as to costs.

Sd/-

(Maden Mohan)  
Member (Judicial)

Sd/-

(M.P. Singh)  
Vice Chairman

/na/