

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 341 of 2000

Jabalpur, this the 29th day of October, 2003

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Awdhesh Kumar Dwivedi, Aged about
38 years, Son of Pt. Shri Ram Kumar
Dwivedi, R/o. Village & Post Lidhora,
Tahsil and District Tikamgarh (M.P.)
at present working as Senior Telecom
Office Assistant (General), O/o Sub
Divisional Officer, (Phones) at and Post
Chhatarpur (MP).

... Applicant

(By Advocate - None)

V e r s u s

1. Union of India,
Ministry of Communication,
Department of Tele-Communications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi - 110001.
2. The Assistant Director General
(SIG), Govt. of India, Ministry
of Communications Department,
(Telecommunications) Sanchar
Bhawan, 20 Ashoka Road,
New Delhi - 110 001.
3. The Chief General Manager,
Telecom, M.P. Circle, Hoshangabad
Road, Bhopal (M.P.), Pin-
4620015.
4. The Telecom District Engineer,
Chhatarpur (M.P.).
5. Shri Narendra Awasthi, Telecom
Technical Assistant, O/o Telecom
Div. Manager, Jabalpur (MP). ... Respondents

(By Advocate - Shri P. Shankaran for official respondents)

O R D E R (Oral)

By G. Shanthappa, Judicial Member -

The applicant has filed the above application seeking
the following reliefs :

"A. That the respondents may kindly be commanded to
justify the legality and constitutionality of Recruitment
Rules, 1991, filed as Annexure A-9, by filing a Time-
Bound Return and in the event of not filing the satis-
factory Return, in view of suggestions and decisions so



taken vide Annexures A-3, A-4 and A4-A by the Ministry of Communication, New Delhi, the Recruitment of Telecommunications, Telecom Technical Assistant Recruitment Rules, 1991, (Annexure A-9) may kindly be declared Unconstitutional, & Ultra vires being discriminatory and consequently may kindly be quashed, in the absence of any provision for considering the departmental candidates who are eligible in all respect and hold requisite qualification of Xth Standard with 3 Years' Diploma in Engineering (Civil.).

B. And in the absence of any Satisfactory Return the Respondents 1 to 4 may kindly be commanded to make necessary provision for Departmental candidates, like Applicant in Annexure A-5 for being considered for selection & Training for the post of Telecom Technical Assistant else the rules in question be declared ultra vires, illegal, discriminatory and not in confirmity with Annexures A-2 and A-3 alongwith necessary directions in the matter, as it deems fit."

2. The case of the applicant is that he joined the respondents Department as Senior Telecom Office Assistant in the year 1989. The applicant belongs to the Civil wing of the respondents and he has also passed the 3 years Diploma (Civil) from Madhya Pradesh Board of Technical Education, Bhopal. The applicant is challenging the legality and constitutional validity of Department of Telecommunications, Telecom Technical Assistant, Recruitment Rules, 1991 which was issued under Article 309 of the Constitution of India which relates to the method of the recruitment to the cadre of technical assistants. The respondents have issued the notification dated 22.07.1991 with regard to framing the rules under Article 309 of the Constitution which are called as Department of Telecommunications, Telecom, Technical Assistant, Recruitment Rules, 1991 (Annexure A-4). Subsequently a clarification was issued regarding the recruitment of TTA and on the qualification for the said post "candidates having qualifications like simple B.Sc., M.Sc. other than the three years diploma as per rules are not eligible for promotion to TTA cadre." However it is clarified that the 3 years engineering diploma in Electrical/Mechanical/Radio/Telecom is the minimum



qualification and any departmental official having higher qualifications in any of the engineering branch mentioned in the recruitment rules will be eligible for promotion as provided in Annexure A-7 dated the 12th February, 1992.

3. The respondents have issued the notification dated 13.11.1994 amending the said rules of 1991. The amendment is as per Annexure A-9. The applicant and one Shri A.K. Sahu have submitted a representation to the respondents requesting them to issue necessary orders by passing a resolution and determination of future ~~of~~^{to} Civil Engineering Diploma holders and their scope of service in the Department and to adopt them for upgradation in the technical wing, as per Annexure A-12 dated 12.11.1997. Subsequently the applicant has also submitted a representation dated 16.04.1999 (Annexure A-14) to the respondents to designate him at the post of TTA or in Junior Engineering Civil Wing, on the ground that he is ^{in civil engineering} qualified ~~and~~ having 10+2 and three years diploma course/for the post.

4. The case of the applicant is that the Department ~~has~~ introduced the new technical cadre of Group-C and finalised the recruitment rules and ~~prepared the draft rules and~~ directed that thereafter the recruitment of Telecom Technical Assistants may be taken up vide Annexure A-4 and A-4A. Under the said proposals the rights of the applicant are ~~to be~~ violated. Hence he have challenged the said amendment.

5. The grounds ^{were} ~~are~~, that the said recruitment rules are framed in the absence of any provision for departmental candidates who hold 3 years diploma in Civil Engineering after 10th standard from the Board of Secondary Education, ^{and others} ~~and others~~, MP, like the applicant ^{were} ~~are~~ ultra vires, illegal, arbitrary and ^{were} ~~are~~ derogatory to the interests of the candidates like



the applicant and others. The further ground urged is that if the said rules are scrutinised, it amounts to denial of equal opportunity in the matter for employment and is as such against the intent of Article 14 and 16 of the Constitution of India.

6. Per contra the respondents have filed their reply denying the allegations and averments made in the OA. The preliminary submission taken by the respondents are that the applicant had challenged the said amended rules after lapse of more than 9 years, hence the application is liable to be dismissed as barred by limitation. The respondents had taken the legal ground that the contention of the applicant is not tenable in view of the judgment of the Hon'ble Supreme Court in A.K. Bhatnagar Versus Union of India reported in 1991 SCC 544, wherein it is held that the rules framed in exercise of powers conferred under provision to Article 309 of the Constitution are solemn Rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. The competent authority who had issued the amendments to the Rules ^{and} has ample powers under Article 309 of the Constitution of India. The applicant has no legal right to challenge the said amended rules. The respondents have further contended that in the case of V.K. Sood Versus Secretary reported in 1993 (Supp.) (3) SCC 9, Hon'ble Supreme Court held that it is not the function of the Court to prescribe qualifications, but the question as to whether the qualification prescribed ^{under} by the Notification is sufficient qualification is not for judicial scrutiny. The rules framed ^{within} the meaning of Article 235 of the Constitution of India. Hence no injustice has been caused to the applicant. OA No. 261/1994 filed by the applicant was dismissed by this Tribunal on 09.05.1994. The applicant



waited for six years and then the same is filed before this Tribunal challenging the constitutional validity of the rules, framed under Article 309 of the Constitution of India. Under the said order of this Tribunal a liberty was given to the applicant to challenge the recruitment rules. Hence he has filed the present Original Application. Alongwith the OA the applicant has not filed any Misc. Application for condonation of delay as provided under Section 21 of the Administrative Tribunals Act.

7. After hearing the Advocate for the applicant and the Advocate for the respondents, after perusal of the pleadings and the documents produced by either sides and also the judgments referred to by the applicant and the respondents, we have come to the conclusion that whether the application is filed within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act⁹ and also whether the applicant has legal rights to challenge the notifications issued under Article 309 of the Constitution of India as ultra vires.¹⁰

8. The admitted facts are that the cause of action arose to challenge the notification in the year 1991. The applicant has earlier filed challenging the said rules in OA No. 261/1994 and the same was dismissed giving liberty to the applicant. This Tribunal did not observe regarding the limitation, but the liberty was given to the applicant to challenge the said recruitment rules. From 1994 till 17.04.2000 the applicant kept mum and he has filed the present Original Application challenging the said recruitment rules without filing any Misc. Application for condonation of delay. In the limitation column, the applicant has stated that the application is within the limitation so prescribed under Section 21 of the AT Act. Though he has mentioned in the said limitation column he

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has not filed any MA for condonation of delay.

9. Since the applicant has not explained the delay in filing the Original Application, only on this ground the OA is liable to be dismissed.

10. Regarding challenging the constitutional validity of the rule framed under Article 309, in view of the judgment of the Hon'ble Supreme Court reported in 1993 Supp. (3) SCC 9 - V.K. Sood Versus Secretary, Civil Aviation and others, appointment-qualifications for-prescribed by rules framed under 309 - held, cannot be challenged on the ground of malafides in that they were tailor made to suit certain individuals - service rules - Constitution of India, Art. 309. In the pleadings the applicant has not stated the plea of malafides while framing the rules. In view of the principles laid down by the Hon'ble Supreme Court the contention of the applicant is not tenable in the eye of law. In the said judgment the Hon'ble Supreme Court has relied on the judgment of B.S. Vadera Vs. Union of India reported in AIR 1969 SC 118 and also General Manager, Southern Railway Vs. Rangachari reported in AIR 1962 SC 36.

11. The observation made in the said judgment by the Hon'ble Supreme Court is that in exercise of the rule making power, the President or authorised persons ^{are} ~~is~~ entitle to prescribe the method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made ^{the} ~~in which they have~~ qualifications to suit, ^{the} ~~stated~~, individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature

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in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.

12. The applicant has cited the judgment of the Hon'ble Supreme Court in Federation of Railway Officers Association and others Vs. Union of India reported in AIR 2003 SC 1344 relates to Government policy-judicial review-limits. He has also cited State of Punjab & Ors. Vs. Ram Lubhaya Bagga Etc. reported in (1998) 4 SCC 117, which relates to questioning the validity of governmental policy and in their view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government ^{frames} ~~forms~~ its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints. The facts of the case mentioned in the reported judgments submitted by the applicant are not applicable to the facts of the present case.

13. Considering the decision of the Hon'ble Supreme Court in the facts of the present Original Application, the applicant has failed to prove the case and the OA is



dismissed on the ground of limitation as well as the applicant has not made out the case for quashing the rules made Under Article 309 of the Constitution of the India.

G. Shanthappa

(G. Shanthappa)
Judicial Member

M.P. Singh

(M.P. Singh)
Vice Chairman

"SA"

मुक्तावाक्य द्वारा दिया गया

(1) श्री अ. शंकरानन्द शर्मा, अध्यक्ष 5 प. शर्मा, अध्यक्ष
(2) श्री अ. शंकरानन्द शर्मा, अध्यक्ष 5 प. शर्मा, अध्यक्ष
(3) श्री अ. शंकरानन्द शर्मा, अध्यक्ष 5 प. शर्मा, अध्यक्ष
(4) श्री अ. शंकरानन्द शर्मा, अध्यक्ष 5 प. शर्मा, अध्यक्ष

ज्ञानसूक्ष्म
18/11/13

Final
18/11/13