

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
Original Application No. 826 of 1998

Jabalpur, this the 31st day of October, 2003.

Hon'ble Mr. Shanker Raju, Judicial Member
Hon'ble Mr. Sarveshwar Jha, Administrative Member

Shri Narendra Kumar Sharma,
S/o Shri Baijnath Prasad Sharma
S.D.O. Telegraphs,
Raisen, Bhopal (M.P.) Circle.

APPLICANT

(By Advocate - Ku. P.L. Shrivastava holding brief of
Smt. S. Menon)

VERSUS

1. Union of India,
Through : The Secretary,
Ministry of Communications,
'Sanchar Bhawan,
New Delhi..
2. The Chairman,
Telecom Commission,
'Sanchar Bhawan'
20 Ashoka Road,
New Delhi - 110 001.
3. The Chief General Manager,
M.P. Telecom Circle,
Hoshangabad Road,
Bhopal-12.

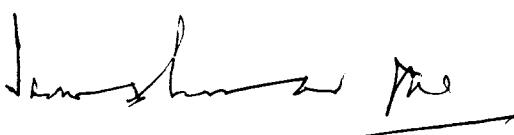
RESPONDENTS

(By Advocate - None)

O R D E R (ORAL)

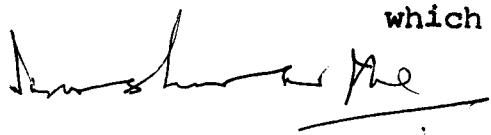
By Sarveshwar Jha, Administrative Member -

The applicant has preferred this OA with prayers that the respondents be directed to revise and recast the seniority list of Group B officials strictly in accordance with Clause 2 (iii) of Appendix I of the Recruitment Rules/Annexure A-III, following 2:1 ratio between qualifying examination candidates and competitive examination candidates, and to that extent, the discrepancy crept in Annexure-A-II be directed to be rectified. He has also prayed for grant of ~~xx~~ relief in accordance with the pro-vision of law, as laid down by the Central Administrative Tribunal Ernakulam Bench in OA No. 982/95 : Jolly Jacob & Others Vs. Union of India & others.



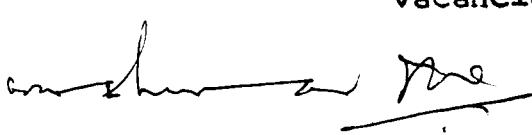
2. The facts of the case, briefly, are that the applicant has been promoted to the Telegraph Engineering Service (TES) Group 'B' in 1987 through Limited Departmental Competitive Examination held in May, 1987 for 1/3rd quota in relation to the remaining vacancy of 1984/1985, as submitted by the applicant. He has given a figure of 120 and 228 vacancies of 1986 (total 330), as the remaining vacancies of the said two years. The name of the applicant appears at Serial Number 63 of the list of selected candidates placed at Annexure A-1. He has further submitted that, while conducting the first Limited Departmental Competitive Examination for Group 'B' posts, it was announced that the said examination was held for 600 vacancies (1/3rd of 1800) as per the judgment of Hon'ble Central Administrative Tribunal, Hyderabad Bench dated 31.01.1995, passed in OAs Nos. 1070/93, 972/89 and 611/90. This led to accomodating 232 successful candidates of the said examination in the revised seniority list. The second examination was held in May, 1986 for the remaining vacancies of 1981, 1983 and 1984 and about 370 candidates were qualified for promotion to the TES Group 'B' and according to him, all said successful candidates were to be recommended for promotion against left over vacancies of 1981. He has further submitted that the vacancies for the year 1983 and 1984 still subsisted and therefore his seniority ought to have been accordingly fixed, which he has alleged has not been done as reflected in the seniority list dated 31.1.1993 (Annexure A-2). He has pleaded that this list needs to be revised according to the direction given by the Ernakulam Bench of the Tribunal in OA No. 982/95 decided on 3.2.1998.

3. The applicant has drawn out attention to the recruitment rules governing the promotion to the cadre of TES Group 'B' which provide for selection of eligible officers passing the

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Departmental Qualifying Examination with minimum pass marks being 40% and 35% for general candidates and SC/ST candidates respectively based on seniority, and for selection of eligible officers through Departmental Competitive Examination with minimum pass marks being 50% and 45% for general candidates and SC/ST candidates respectively, based on merit, in the ratio respectively of 2/3rds and 1/3rds of the vacancies. The inter se seniority of officers who have qualified in the Departmental Qualifying Examination and those who have qualified in the Limited Departmental Competitive Examination shall be in the ratio of 2:1 starting with the officers selected through the method of selection by the Departmental Promotion Committee on the basis of the Qualifying Examination. Briefly, the applicant has submitted that his seniority has not been fixed against 1/3rd quota of vacancies based on his ranking available in the years of 1983 and 1984. He has alleged that the respondents have not followed the provisions of clause 2(ii) of Appendix-I to the said recruitment rules in the matter of assigning seniority to him, in order to please and satisfy the junior engineers belonging to the group of qualifying officers. He has given the details of the vacancies for the years 1983, 1984 and 1985 being 150, 220 and 102 respectively, and he has alleged that the officers who qualified through the competitive examination held in the year 1986 and 1987 have not been properly accommodated against these vacancies, inasmuch as some of the positions particularly for the year 1983 were utilised in favour of the qualifying examination officers category.

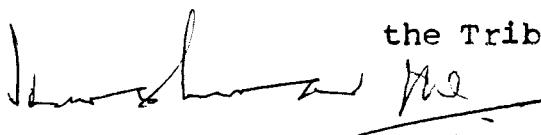
4. Giving an extract from the decisions of the Central Administrative Tribunal, Ernakulam Bench in OA No. 982/95, the applicant has sought to contend that carry over of the vacancies for the officers, as distinct from a list of



competitive officers prepared after a particular competitive examination to fill up vacancies for a particular year, is permitted: It is observed that in the decision of Ernakulam Bench of the Tribunal the fact that the vacancies for the years 1983, 1984 and 1985, i.e., for years earlier to 1986 for which the 1/3 quota was carried over, examination was held in the year 1986. The Tribunal had directed the respondents to work out the vacancies representing the 1/3rd quota in TES Group 'B' meant for the Junior Engineers found successful at the Competitive Examinations after the commencement of the recruitment rules for the TES Group 'B' category in 1981 upto 1986. The extract from orders of the Tribunal as produced by the applicant in the OA are not being reproduced to avoid repetition.

5. The applicant has contended that the said decision of the Tribunal had direct bearing on his case and accordingly he submitted a representation on 26.8.98 making a request that his seniority may be fixed against the vacancies of 1983/84. He has also claimed to have submitted alongwith his representation a copy of the said judgment of the Tribunal. There is, however, no response from the respondents in the matter. Referring to the decision of the Hon'ble Apex Court in Ashwini Kumar vs. State of Bihar in which it was held that the parties who failed to approach the Court could be ignored and that all affected persons, whether parties or not, were to be extended the relief, he has contended that the respondents Nos. 1 and 2 being parties in the matter in the said OA ought to have granted the relief to him also and that, by not doing so, they have become liable for contempt of court.

6. The respondents have however, submitted that, while the applicant has relied on the decision of Ernakulam Bench of the Tribunal in OA No. 982/95 and also the order of Hyderabad

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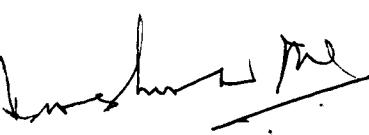
Bench of the Tribunal in OA No. 507/1994 decided on 3.2.98 and 22.4.98 respectively and has sought fixation of his seniority in the revised list No. IX circulated vide their office letter dated 5.8.98, the application of the applicant is not maintainable for the simple reason that the applicant has failed to incorporate and implead those officials who will be effected if the application is allowed. They have further submitted that, in pursuance of the decision of Ernakulam Bench of the Tribunal, as referred to above, they have revised the seniority list Nos. VII, VII, and IX and have clarified that, while revising the seniority list No. IX, they decided not to leave any slot vacant after serial No. 293 for competitive quota as no candidate from the said quota was available for the relevant years. The respondents have argued that, by keeping the slot vacant, they would have faced the revision of subsequent seniority list and, according to them, this was not ordered for by Ernakulam Bench of the Tribunal nor was reversion of already promoted TES Group 'B' officers ordered or directed by the Tribunal. They have also argued that the applicant cannot claim his seniority with retrospective effect, as he only qualified in the competitive examination held in the year 1987. A question was raised in this regard as to whether it would be in order for the applicant to claim the seniority with reference to a date when he was not born in the grade or the service. The respondents have categorically negated the allegations that they have acted contrary to the recruitment rules in order to please and satisfy the Junior Engineers belonging to the group of qualifying officers. They have emphasised that the seniority list of TES Group 'B' officers has been revised in compliance with the order of Hon'ble Tribunal only and that the question of applicant being discriminated against does not arise.

7. On examination of the contentions of both the sides it

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is observed that while the applicant has quite inappropriately drawn inference from the orders of the Ernakulam Bench of the Tribunal in OA No. 982/95 that these orders would also cover the seniority of officers who are declared successful in the competitive examination held subsequent to 1986 in which he subsequently qualified, the respondents have not commented upon the total of vacancies which have been given by the applicant in his original Application as the ones taken into account in the recruitment action taken by the respondents in the year 1986, while holding the examination for the said year and also for the year 1987. It is, no doubt, admitted that while the matter regarding filling vacancies meant for the respective quotas, particularly quota relating competitive examination, was set at rest vide orders of the Ernakulam Bench of the Tribunal, as referred to above, some of the issues raised by the respondents in their reply do not appear to have been explicitly covered under the said orders. That being the case, the respondents have, in compliance of the orders of the Tribunal, as they have understood, revised the seniority list of TES officers Grade 'B'. The applicant does not seem to be having a case for revising his seniority in so far as he qualified in the competitive examination for the year 1987, as obviously he was not available against the vacancies for the year that he has referred to, namely, the remaining vacancies for the years 1983, 1984 and 1985 against the quota which was to have been taken care of in the examination held in the year 1986 as a cumulative exercise.

8. Under these facts and circumstances of the case and also after perusing the material available on record and after hearing the learned counsel for the applicant, none being present on behalf of the respondents, we are of the considered view that this OA is not fit to be allowed. Accordingly, we are constrained not to allow this OA keeping in view the



above observations and the provisions under Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987. No order as to costs.

Sarweshwar Jha
(Sarweshwar Jha)
Administrative Member

S. Raju
(Shanker Raju)
Judicial Member

SKM

पृष्ठांकन सं. ओ/ब्ला..... जलदुर, दि.....
उनिलिपि तात्त्विक दिवस

(1) राधेश, उत्तर प्रदेश कानूनी विवाद, जालक Smt - S. menon Adv. I.B.P.
(2) अमित शर्मा, उत्तर प्रदेश कानूनी विवाद, जालक Shri B. dasilva Adv. I.B.P.
(3) अमित शर्मा, उत्तर प्रदेश कानूनी विवाद, जालक Shri B. dasilva Adv. I.B.P.
(4) अमित शर्मा, उत्तर प्रदेश कानूनी विवाद, जालक Shri B. dasilva Adv. I.B.P.

सुनामी का दायरेक कार्यालय, दिल्ली
ज्योति राजनीति दिवस
15/12/03

Final
12/03