

**Central Administrative Tribunal
Principal Bench**

OA No.2082/2011

New Delhi this the 1st day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Nar Singh, aged 50 years, Son of Shri Hari Singh, Resident of Village and Post Office Jharsa, Sainipura, near M.D. High School, Tehsil and District Gurgaon, Haryana.
2. Krishna Nath, aged 58 years, Son of Late Shri Ram Das, R/o House No.71, Prashant Vihar, Khoda Colony, Ghaziabad, U.P.
3. Mam Chand, aged 63 years, Son of Late Shri Phundan Singh, R/o # 11/382, Lalita Park, Lakshmi Nagar, Delhi-92.
4. Pooran Singh, aged 53 years, Son of Late Shri Chiranjit Lal, R/o A-53, Sector 48, Noida, U.P.

... Applicants

(By Advocate: Shri Rohit Sharma)

Versus

1. Mahanagar Telephone Nigam Limited through its Chairman and Managing Director, Jeevan Bharti Building, 124, Connaught Circus, New Delhi-110001.
2. The General Manager (Admn), Mahanagar Telephone Nigam Limited, 6th floor, Door Sanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi-110002.

3. The Deputy General Manager (Pers),
Mahanagar Telephone Nigam Limited,
6th floor, Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi-110002.

(By Advocate: Shri R.N. Singh)

4. Babu Ram, Staff No. TA1091
5. Ganga Prasad Sharma, TA 1090
6. Shiv Kumar Sharma, TA 1093
7. Yogender Nath Raj, TA 1103
8. Uma Chandran Mishra, TA 1107
9. Harish Chand, TA 1102
10. Narendra Kumar, TA 1096
11. Jai Chand TA 1108
12. Krishan Chander Sharma, TA 1101
13. Ram Bahadur Singh, TA 1099
14. Kapil Dev, TA 1109
15. Ram Krkipal Singh, TA 1105
16. Vijay Kumar Vaish, TA 1097
17. Ved Prakash, TA 1100
18. Kamal Kishor, TA 1098
19. Jai Prakash, TA 1104
20. Pati Ram Yadav, TA 1087
21. Raj Kumar Singh, TA 1094
22. Narottam, TA 1088
23. Girish Kumar, TA 1092
24. Virjesh Kumar, TA 1086
25. Ramesh Chander, TA 1095.
26. Rakesh Pachouri, TA 1106
27. Bhupinder Singh, TA 1115

28. Attam Parkash Sharma, TA 1129
29. Kaptan Singh Sejwal, TA 1119
30. Narinder Kumar, TA 1127
31. Subhash Chandra Sharma, TA 1110
32. Om Prakash Rai, TA 1131
33. Raj Kumar Singh, TA 1122
34. Yogendra Singh, TA 1116
35. Dharamvir Singh, TA 1117
36. Jagpal, TA 1120
37. Udai Pratap, TA 1113
38. Laxman Singh, TA 1112
39. Ramesh Kumar, TA 1123
40. Satya Pal Singh Arya, TA 1130
41. Onkar Nath Asthana, TA 1111
42. Jagdish Chand, TA 1118
43. Som Dutt, TA 1124
44. Netra Pal Singh, TA 1133
45. Azad Singh, TA 1128
46. Room Singh, TA 1126
47. Ram Phal, TA 1125
48. Prem Chand, TA 1121
49. Ashok Kumar Sharma, TA 1114
50. Kanwar Singh Rana, TA 1135
51. Subhash Chand Khaspar, TA 1136
52. Rajendra Prasad, TA 1137
53. Lakshmi Raut, TA 1150
54. Mahipal, TA 1149
55. Tersu Prasad, TA 1146.
56. Chaman Lal, TA 1145
57. Ashok Kumar Sharma, TA 1138
58. Chandgi Ram, TA 1134

59. Jai Chand Chauhan, TA 1144
60. Ashwani Kumar Kapil, TA 1141
61. Ramesh Chand, TA 1142
62. Pratap Singh, TA 1143

C/o

Mahanagar Telephone Nigam Ltd., 6th Floor, Door Sanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi-110002.

... Respondents

O R D E R (Oral)

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(a) Quash Order No. MTNL/CO/Pers/SR/Rectt. Rules TTA/2001 dated 23.05.2011 issued by Respondent No.4, whereby it has been decided that that post of TTA through walk-in-interview would be filled based on the existing gradation list in the TM cadre; and

(b) Declare that the Select List notified in Letter No.STR/5-1/TTA/Pt.II/22 dated 3.3.2011 is the correct list for absorption to the post of TTA through walk-in-interview.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicants are working as Telecom Cable Mechanics (TCMs) in Mahanagar Telephone Nigam Limited (MTNL) Delhi. Initially they joined as regular mazdoor and thereafter got promoted as Telecom Mechanics (TMs) after clearing the screening test. The MTNL Board decided to upgrade 10% of the total strength of TMs to

the cadre of TCMs but at the same time retained the total strength of TCMs and TMs at the same level. An office order to this effect was issued on 11.04.2002. Some clarification was sought by the Field Units in the matter which was provided by Annexure A-2 letter dated 18.11.2002 from the MTNL HQrs. The next promotional post both for TMs and TCMs is Telecom Technical Assistant (TTA).

2.2 As per the Telecom Technical Assistants (TTAs) Recruitment Rules (RRs), 2001 (page 58), 50% of the posts of TTAs are to be filled up by direct recruitment, 10% by absorption from amongst the Phone Inspector, Transmission Assistants, Wireless Operators, Auto Exchange Assistants etc. The remaining 40% of the posts are to be filled up by promotion through Limited Departmental Competitive Examination (LDCE).

2.3 The MTNL Board in its 228th meeting held on 30.08.2007 decided to grant one time relaxation in educational qualifications. The Board also decided that 50% vacancies earmarked for departmental candidates (absorption + LDCE) shall be filled in the following manner:

- i) 30% shall be earmarked for recruitment by absorption through walk-in-interviews.
- ii) 20% shall be earmarked for recruitment by promotion through LDCE.

2.4 A communication in this regard was issued vide Annexure A-4 letter dated 07.09.2007.

2.5 The respondents conducted walk-in-interviews between the years 2007-2011 and vide Annexure A-5 communication dated 03.03.2011 published a select panel of candidates selected for the posts of TTAs through walk-in-interviews. The names of the applicants figured at serial nos.1,2,3 and 4 in the said list.

2.6 It was represented by some officials that TCMs should not be promoted to the posts of TTAs through walk-in-interviews. When the applicants came to know of such a representation, Annexure A-6 representation was submitted on their behalf by applicant no.1 to GM (HR), MTNL Corporate Office. The respondents vide impugned Annexure A-1 communication dated 23.05.2011 from Corporate Office to GM (Admn.), MTNL, Delhi, informed all concerned as under:

“Sub: Recruitment of TTA by absorption (Walk-in group) and LDCE at Delhi and Mumbai Units of MTNL.

Ref: Your letter No. STR/5-1/TTA/Pt.III/25 dated 05.04.2011

With reference to your letter under reference on the above mentioned subject, reasons for keeping the second list in abeyance for so long time when there was no stay in the matter may be clarified.

Further, it is hereby conveyed that TCM is the restructured cadre formulated from the eligible TMs as per the approved instructions. These candidates from TCM cadre may be allowed/considered for TTA through walk-in group based on their existing gradation list in the TM cadre”.

2.7 Aggrieved by the impugned Annexure A-1 communication dated 23.05.2011 the applicants have filed the present OA, praying for the reliefs, as indicated in para-1 supra.

3. In support of the reliefs prayed for the applicants have mentioned the following important grounds:

i) Placing TCMs at par with TMs is in violation of Note No.2 of column-12 of the Schedule to the Rules. The relevant portions of Column 12 & Note 2 are reproduced below:

Column-12

“A) **Absorption:** from amongst the following Group C employees, namely;

(i) Phone Inspector/Transmission Assistants/Wireless Operators/Auto Exchange Assistant.

(ii) Employee borne on regular establishment of Telecom Engineering Wing of the MTNL and possessing a minimum qualification of 3 years Engineering Diploma in Telecommunications Engineering/Electronics Engineering/ Electrical Engineering/Radio Engineering/ Computer Engineering/M.Sc. Electronics from any recognized Technical Institution/University after 10th standard.

(iii) Technicians having 10+2 qualification or equivalent qualification.

(iv) Technicians holding 2 years ITI diploma after matriculation”.

Note 2. Selected list shall be prepared for the purpose of training before absorption in the following order namely;

i) The officials working in the higher grade would be placed en bloc above those working in the lower grade.

ii) **The officials working in the same pay scale, having length of service would be placed above those having lesser length of service”.**

(Emphasis supplied).

ii) Treating the TCMs at par with TM for promotion to the post of TTA through walk-in-interviews is completely arbitrary,

unreasonable, irrational and violative of Articles 14 and 16 of the Constitution. TCM is a more specialist job than TM.

iii) The applicants are in a higher grade of TCM. In the common seniority of TCMs and TMs, they are at serial no.2856, 2405, 4670 and 2911 respectively. In the walk-in-interviews by virtue of their lower seniority position in the common seniority list they would never be considered for the post of TTAs.

iv) The applicants are graduate whereas eligibility for appearing in the LDCE for promotion to the post of TTAs is 10+2 (Senior Secondary). Thus the applicants would not be eligible for even appearing in the LDCE for TTAs.

4. Pursuant to the notices issued, the respondents entered appearance and filed the reply in which they have made the following averments:

4.1 As per the RRs for TTAs (Annexure R-2), TCM, which is a upgraded cadre formulated from the eligible cable jointer/Cable splicers/Telecom Mechanics, are also eligible for promotion to the post of TTAs.

4.2 The applicants were considered under the absorption quota (walk-in-interviews) but they could not be selected by virtue of their lower position in the common gradation/seniority list of TMs. The seniority-cum-merit is the criteria adopted for selection through absorption.

4.3 TMs are in NE-6 scale whereas TCMs are in the higher scale – NE-7. Since the applicants are graduates, they were not issued roll numbers for participation in the LDCE for promotion to the grade of TTAs. The respondents vide Annexure R-1 letter dated 22.11.2007 have issued certain clarification to amendment to RRs of TTAs prescribing therein the eligibility criteria for participation in the LDCE for TTAs. The Annexure R-1 communication has not been challenged by the applicants in the present OA.

5. Rejoinder has also been filed by the applicants to the reply filed on behalf of the respondents in which, more or less, the averments made in the OA, have been re-stressed.

6. On completion of the pleadings the case was taken up today for hearing the arguments of the learned counsel for the parties. Arguments of Shri Rohit Sharma, learned counsel for the applicants and that of Shri R.N. Singh, learned counsel for the respondents were heard.

7. We have given our thoughtful consideration to the arguments of the learned counsel for the parties and perused the pleadings and the documents annexed thereto.

8. It is an admitted position that the applicants were initially in the TM grade carrying NE-6 scale. They were placed in the grade of TCM carrying higher scale of NE-7. However, the respondents have continued to maintain common seniority list for TMs and TCMs. The RRs for TTAs stipulate that TMs and TCMs are eligible for

promotion under the departmental quota of 50%. The said quota has been split into two parts, namely, absorption (30%) and LDCE (20%). For promotion through absorption, the respondents have prescribed walk-in-interviews mode for selecting the suitable candidates. In doing so, merit-cum-seniority is considered. In the other words, performance of the candidates in the interview together with their seniority positions in the common seniority of TMs/TCMs are considered by giving prescribed weightage to performance in interview and seniority. The applicants have also participated in the walk-in-interviews but they could not be selected. Having failed in the said selection process they are embargoed from questioning the selection process itself. On this issue, the Hon'ble Apex Court in

Madan Lal & Ors. V. State of Jammu & Kashmir & Ors. [(1995) 3 SCC 486] has observed as under:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he

would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

9. The other contention of the applicants that in terms of the communication dated 22.11.2007 (Annexure R-1), they are not even eligible for promotion through the LDCE route since they are graduates and the eligibility criteria prescribed for LDCE does not permit graduates to participate, cannot be adjudicated in this OA as there is no challenge to Annexure R-1 letter in this OA.

10. In the conspectus of the discussions in the foregoing paras, we do not find any merit in this OA. The OA is accordingly dismissed. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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