

**Central Administrative Tribunal
Principal Bench**

OA No.2341/2012

New Delhi, this the 10th day of December, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Jai Prakash,
S/o Shri Poosa Ram,
Sr.T.O.A., (G),
CL-5395, Office of A.O.T.K.-II,
Chitra Vihar,
New Delhi,
R/o Village Mohammadpur Dheda,
Muradnagar,
Distt-Ghaziabad
(U.P.)

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Mahanagar Telephone Nigam Ltd.,
Khursheed Lal Bhawan,
Janpath, New Delhi, through its
Chairman-cum-Managing Director.
2. The General Manager (Admn.),
Mahanagar Telephone Nigam Ltd.,
K.L. Bhawan, New Delhi-110050.

...Respondents

(By Advocate : Ms. Rachna Joshi Issar)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant was appointed as Telecom Operating Assistant (for short, TOA). The post of Sr. TOA was

created at a subsequent stage. There were no Recruitment Rules for this purpose and entire issue was covered by the policy decisions. Initially, in the year 1990, it was decided that such of the TOAs who possessed the qualification of 10+2 would be entitled to be considered for appointment as Sr. TOA. Subsequently, an opportunity was provided to TOAs who did not have 10+2 qualifications, to acquire eligibility by clearing the competitive test. Such a test was held in 1998. The result thereof has been declared in January, 1999 and the applicant cleared the same.

2. All the TOAs who were appointed as Sr. TOAs were subjected to induction training. The name of the applicant and various others were included therein. The applicant contends that the respondents have meted out a discriminatory treatment to him, *inasmuch* as he was notionally promoted as Sr. TOA w.e.f. 18.01.1999, the day on which the results were declared, whereas juniors to him including one Shri Vinod Kumar were appointed w.e.f. 01.01.1994.

3. Initially the OA was filed claiming the relief of notional promotion w.e.f. 01.01.1994 and at a later stage, it was amended to challenge the guidelines contained in letter dated 17.04.2001.

4. The respondents filed the counter affidavit, opposing the OA. It is stated that the applicant acquired eligibility only on 18.01.1999, by clearing the competitive test and he has been promoted with effect from that date. It is also submitted that the question of promoting him with effect from any date, anterior the one, on which he was qualified, does not arise. It is also stated that as regards notional fixation, the guidelines are clear in their purport and the applicant does not fit into that.

5. We heard Shri M.K. Bhardwaj, learned counsel for applicant and Ms. Rachna Joshi Issar, learned counsel for respondents.

6. As observed earlier, the appointment to the post of Sr. TOA is governed by the policy decisions and there are no recruitment rules as regards that. For the first time, it was through proceeding dated 16.10.1990, issued by the

Ministry of Communication, Department of Telecommunications. The basic features are evident from para 4 thereof, which reads as under :-

“4.(a) Senior Telecom Operating Assistants :-

The new restructured cadres of Senior Telecom Operating Assistants Grade I will have a minimum educational qualification of 10+2 standard. Besides, these personnel will receive in-house training on computer applications and operation with a view to man posts where such an application is necessary, e.g. computerised directory-enquiry, computerised trunk automatic exchange/Data Processing etc. Creation of posts in the new grades will be on the basis of job requirements. As the productivity is to be increased, the existing employees are to be utilised by imparting training for upgradation of their skills. The following arrangements will be made during transitional phase and also as long term measure :-

By selection from Telecom Operating Assistants Grade I who possess 10+2 standard educational qualification through an aptitude test. For other Telecom Operating Assistants in Grade I and Phone Mechanics, through competitive examination.

(b) Senior Assistant Supdt. Telegraph Traffic.

Induction in the newly created restructured cadre of Senior Asstt. Supdt. Telegraph Traffic will be 100% from the existing cadre of Asstt. Supdt. Telegraph Traffic only. Mode of selection will be finalised and instructions communicated separately. Creation of posts in the restructured cadre will be on the basis of justification of technology such as SFT,

SFMSS, FAX, electronic key-boards, bi-scriptual TPs, Bureau FAX Service, Training Centres etc.”

7. Admittedly, the applicant did not hold the qualification of 10+2. He made an attempt to clear the screening test in the year 1996, but was not successful. It was only in 1999, that he came out successful. Promptly enough, the respondents promoted him to the post of Sr.TOA with effect from the date on which he acquired the qualification.

8. It is true that the respondents have extended the benefit of notional promotion w.e.f. 01.01.1994 in favour of those who had exercised option and had become Sr. TOA prior to 01.11.1998. For such candidates, the notional fixation of scale of pay from 01.01.1994 was to be effective from 01.11.1998. It was also mentioned that no arrears would be payable for the period earlier to 01.11.1998.

9. The applicant is under the impression that the appointment to the post of Sr. TOA has taken place for the first time on 01.11.1998. Several TOAs were promoted

much prior to 1998. Further, the very policy document dated 17.04.2001, made it clear in para iii, which reads as under :

“(iii) Those who failed in the screening tests in the earlier attempts but passed the same in the subsequent attempts will be given the benefit of notional fixation from the subsequent date only.”

10. Thus, the TOAs who qualified subsequently, would be entitled to be appointed only with prospective effect and the question of notional seniority for them does not arise.

11. We do not find any merits in the OA and the same is accordingly, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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