

(2003) 12 CAL CK 0027
In the Calcutta High Court
Case No : Writ Petition No. 8719 (W) of 2003

Amit Kr. Nandi and Others

APPELLANT

Vs

Bharat Sanchar Nigam Ltd. and Others

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 CALLT 335

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Sadananda Ganguly, for the Appellant; P.K. Ghosh, Senior Advocate, Pradip Sen and Kishore Dutta for the Respondent No. 1 (BSNL), Sardar Amjad Ali, Anirban Biswas and Sikha Bhattacharyya and B.R. Neogi and Joydip Sen, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mitra, J.—This writ petition has been moved by 43 petitioners claiming to be working as Telecom Technical Assistant hereinafter termed as T.T.A.) under Calcutta Telecom Circle. Since Department of Telecommunication has been taken over by Bharat Sanchar Nigam Ltd. (hereinafter termed as BSNL). The petitioners can be said to be working under BSNL.

2. The prayers-of the petitioners in this writ petition are as follows:

(a) A writ of or in the nature of Mandamus commanding their men, agents, or subordinates to take necessary steps for sending the petitioners for JTO training for promotion to the said Cadre (Junior Telecom Officer) by following list published on 24.4.1998 on the basis of screening test held on 29.1.1995 under the then Recruitment Rules Policy on priority basis before sending any other persons from departmental quota declared to be found qualified subsequently.

(b) A writ of/or in the nature of Mandamus commanding the respondents to refrain from sending the candidates against 15% departmental quota on the

basis of competitive test held in 1999 and in 2000 by relaxing the qualifying standards, for JTO training superseding the petitioners who have qualified themselves much earlier, thereby affecting their seniority in the cadre.

(c) A writ of or in the nature of Mandamus, commanding the respondents not to give effect of further effect to Memo No. 12-15/ 2002/DE dated 10.3.2003 issued by BSNL Department Examination Branch, through its joint Deputy Director General.

(d) A writ of or in the nature of Mandamus commanding the respondent Nos. 1 and 2 to take immediate steps to send the petitioners and others for JTO training for promotion within a specific time frame preferably within three months who have been declared qualified in 1996 for such training and promotion and the list published on 29.4.1998 as there are sufficient vacancies upon declaration that policy of the respondent Nos. 1 and 2 to give from the said list by yearly instalments is irrational against public policy and in violation of the right of the petitioners.

(e) A writ of or in the nature of Certiorari commanding the respondents to certify and transmit all relevant records before this Hon"ble Court so that conscionable justice may be rendered to the parties.

3. According to the petitioners, Rules for Recruitment to the cadre of Junior Telecom Officer (hereinafter termed as J.T.O.) was framed by the issuance of Notification published in the Gazette. This can be said to be Recruitment Rules. The petitioners claimed that by the said Rules the J.T.O.s were to be recruited in respect of the existing vacancies of 65% against outsider quotas of vacancies and 35% against the departmental quotas of vacancies, provided the selected candidates undergo prescribed training as per training plan laid down and amended by the department from time to time.

4. The petitioners stated that in so far as 65% vacancies against the outside quota was concerned the method of recruitment was through the competitive examination. In so far as the 35 vacancies against departmental candidates by way of promotion the method was through competitive examination/qualifying examination amongst departmental candidates having requisite qualifications and from the cadres working as Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants, Wireless Operators and also by way of seniority-cum-fitness through separate qualifying test and the interse seniority was to be decided on the basis of length of service in the grade. According to the petitioners, the 35% vacancies against the departmental quota has been subdivided and distributed into three categories of departmental candidates. 15% + 10% + 10% and this was provided in the Recruitment Rules 1990. In so far as 15% out of 35% as mentioned in Column 12 under Part-1(ii) of the Schedule Group-C employees in the department whose scale of pay was less than that of Junior Telecom Officer were eligible provided that they have passed High School/Matric Examination or its equivalent and they have putting at least 5

years of continuous satisfactory service in one or more eligible cadres. Age limit was fixed as 40 years and in case of S.C. and S.T. 45 years. According to the petitioners in 10% departmental candidates belonging to Transmission Assistant (T.A.), Telephone Inspectors (T.I.), Auto Exchange Assistants (AEA) and Wireless Operators who render 3/5 years continuous satisfactory service were eligible to appear in the competitive examination for promotion to the Junior Telecom Officers but for them the prescribed qualification was also High School/Matric Examination or its equivalent and to age limit was not above 40 years in case of general candidates and not above 45 years in case of SC & ST.

5. The petitioners further stated in the writ petition that in so far as the rest quota of 10%, candidates belonging to aforesaid four cadres who had put in 10 years of continuous satisfactory service having similar qualification were eligible for promotion, only exception was that in their case there was no age limit. Now the petitioners in paragraph 8 of this writ petition have pleaded that in the year 1995. The Department of Telecommunication declared for holding departmental qualifying examination for promotion of the P.T.s/AEAs/Wos/T.As. to cadre of JTA excluding the T.T.As. Subsequently, in terms of a judgment of Central Administrative Tribunal, Ernakulam Bench passed on 23.1.1995 the T.T.As. were also allowed to appear at the screening test scheduled to be held on 29.1.1995 instead of departmental qualifying examination. The said direction was circulated by Director of Telecommunication Departmental Examination Section to all the Chief General Officer, Telecom Circles, C.G.M., Telephone, Calcutta, Madras and others by the letter dated 27.1.1995. Subsequently, according to the petitioners, Recruitment Rules for J.T.Os. were amended to some extent and the quota against outsider vacancies that is direct recruit was made 50% instead of 65% and the 35% quota against vacancies for departmental candidates were made 50% with two Sub-divisions, namely, 35% against vacancies of J.T.Os. from T.T.As. and 15% against vacancies of J.T.Os. from Gr-C staff other than T.T.As. Thereafter, selection process for 35% quota and 15 by way of competitive examination amongst the Gr. C staff who are not T.T.As., T.E., A.E.A., W.O., T.A. & R.S.A. After this screening test the petitioners were selected for promotion to the post of J.T.Os. The petitioners named including names of other candidates were empanelled serially. According to service seniority on respect of cadre and a total number of 507 candidates were empanelled showing that they have qualified in the qualifying screening test held on 29.1.1995 for induction course of J.T.O. training and promotion thereof. In this writ petition a copy of the said list published on 24.4.1998 has been annexed and made annexure P-2. In the year 1993 to a Memorandum dated 13.7.1993, Ministry of Telecommunication directed absorption of all qualified Phone Inspectors (P.I.)/Transmission Assistants, T.As./Wireless Operators etc. In J.T.O. cadres against direct recruitment quota in order to facilitate promotion of those qualified cadres and also for smooth functioning for smooth functioning of the department.

6. In the year 1996 by a letter dated 2.2.1996 issued by the Assistant Director General (STC) clarification was made to the extent that since that T.T.As. were

allowed to participate in the qualifying screening test against 35% quotas of vacancies and they appeared in the examination held on 29.1.1995 they cannot be allowed to participate against 15% quota of vacancies. The copy of the said letter dated 2.2.1996 has been made annexure P-4 to the writ petition. According to the petitioner even before publication of the result of the screening test held on 29.1.1995, the Department of Telecommunication introduced Junior Telecom Officer Recruitment (Amendment Rules 1996) by Notification dated 9.2.1996. By way of said Amendment the following was inserted "length of service in the cadre of Phone Inspector/A.E.A./T.A./Wireless Operators/Telecom Technical Assistants will be criteria for sending them for J.T.O. training. A copy of said Rules of 1996 has been made annexure P-5 to the writ petition.

7. According to the petitioners by way of further clarification the department of Telecommunication by Notification dated 11.3.1997 clarified that in case of those T.T.As. who opted to become T.T.A. from P.I./T.A./W.O/ A.E.A their length of service, in P.I./T.A./W.O./A.E.A may also be counted for deciding their eligibility for sending them for J.T.O. training. According to the petitioners, because of such clarification the higher qualified T.T.As. with good results in screening test have suffered a set back. Copy of the said Memo dated 11.3.1997 has been made annexure P-6 to the writ petition.

8. Now, the petitioners raised grievance by alleging that before publication of the panel of this screening test which took place on 29.1.1995, the Department of Telecommunication by another Memo dated 21.2.1998 intimated that their decision that all the vacancies of J.T.Os. created based on justification as on 1.1.1998 and result of vacancies due to promotion of 3609 J.T.Os. to T.E.S. Group-B will be filled up by the qualified P.I.s, RS.As., etc. as J.T.O. under 35% quota. A copy of the said order dated 21.2.1998 has been made annexure P-7. Immediately after such decision the Department of Telecommunication issued a Memo dated 5.3.1998 and this Memo is also affecting the interest of T.T.As. already on roll. This Memo has been made annexure P-8. On 24.4.1998 the panel of T.T.As. who succeeded in the qualifying screening test held on 29.1.1995 was published.

9. According to the petitioners on the basis of the said list, the applicants were not sent for J.T.O. training for promotion to the post of J.T.O. and instead the department by Notification dated 6.9.1999 published new Recruitment Rules for Junior Telecom Officer (J.T.O.). According to the petitioners, drastic change has been made by the said Rules in qualification and experience for promotion to the post of J.T.O. from T.T.A. Thereafter representation dated 30.12.1999 was made by one of the Members of Parliament at that point of time. But the representation was not considered.

10. Since at this juncture a stalemate arose, the General Manager, Calcutta Telephone by a D.O. dated 9.3.2000 addressed to the Secretary, Department of Telecom Service pointed out that about 458 T.T.As. in Calcutta Telephones who have qualified in the screening test could not be deputed for training for want of

vacancies against the department quotas and sought for promotion or absorption of these T.T.As. of Calcutta Departmental Quota at Maharashtra Circle as there were about 200 vacancies there and Maharashtra Circle were also willing to absorb surplus candidates from Calcutta Circle. The Secretary did not respond and on 24.3.2000 a circular was issued by the Assistant General Manager (R & E) Calcutta Telephone for holding second qualifying screening test for promotion to the post of J.T.O. against 35% quota and the said test was scheduled to be held on 11.4.1999 and postponed to 23.5.1999 and in the penultimate paragraph of the said Circular it was indicated that large number of T.T.As have qualified in the last screening test for promotion to the post of J.T.A under 35% quota but could not be sent for training for want of vacancies. By another Circular dated 2.5.2000 applications were invited from departmental candidates for departmental competitive examination for promotion to J.T.O. (15% quota). Copy of the said Circular dated 2.5.2000 has been made annexure P-12. After publication of list of the qualifying T.T.As. for promotion to the post of J.T.O. on 24.4.1998 on the basis of test held on 29.1.1995. Only 24 candidates from amongst 35% departmental quota were deputed for J.T.O. pre-recruitment training. The said candidates sent for training have been promoted to the post of J.T.O. after completion of training and success in the post training test. According to the petitioners BSNL issued a circular dated 10.8.2001 from which it will appear that in Calcutta T.D. (Telecom District) 437 candidates were waiting for J.T.O. training in 25% quota and 40 vacant posts were allotted T.D. Then by another Memo dated 6.11.2001 the Assistant General Manager, R & E Calcutta Telephone. BSNL deputed 29 qualified and selected departmental candidates amongst 35% qualifying quota and 15% competitive quota for J.T.O. training. From the said list it appears that 18 candidates out of 29 were deputed for training from 15% competitive quota and the rest 11% only from 35% qualifying quota. According to the petitioners the authority has not followed seriality in respect of candidates from 35% quota and they followed pick and choose policy. In 202 by a Memo dated 18.3.2002 authority again deputed only 34 candidates for J.T.O. training from the list dated 24.4.1998 in the similar manner. After deputation of 34 candidates for J.T.O. training out of 35% departmental quota the authority in April 2002 again circulated and that they have diverted 500 posts of J.T.O. vacancies from direct recruitment quotas to 35% departmental quotas during 2002-03 and the candidates in 35% departmental quota who are waiting for J.T.O. training would be sent for such training. According to the petitioner from the chart prepared by BSNL authorities in the month of April 2002 it will appear that in Calcutta T.D. Circle total 401 candidates are waiting for J.T.O. training out of 35% quota and only 36 posts have been allotted to the said circle for J.T.O. training to the candidates qualified in the test held in 1995. According to the petitioners considering the said problem of stalemate position of large number of qualified T.T.As. under 35% departmental quotas the Chief General Manager of Calcutta Telephones proposed to the Director, BSNL by letter dated 17.7.2002 to consider approval of one time special relaxation for 209 qualified T.T.A. candidates to convert vacancies from 50% direct recruitment to 35%

departmental quota so that these left over T.T.As. who have been waiting for last seven years can be deputed for J.T.O. training.

11. In response to the said proposal the D.D.G. (Estt.), BSNL by his letter dated 19.8.2002 intimated the Chief G.M., Calcutta Telephones that the situation for one time relaxation as has been made by his letter dated 17.7.2002 cannot be acceded to. According to the petitioners, the manner in which the candidates are sent for J.T.O. training it will take at least 8 years to exhaust the list of candidates published in 1998. The petitioners submitted a representation dated 30.11.2002 but of no avail.

12. Now, on 10.3.2003 BSNL authorities issued a circular relaxing the qualifying standard of these candidates for 15% departmental quota and this Memo has been changed or impugned in this writ petition. In this Memo dated 10.3.2003 it was mentioned that this relaxation will be only for the examination held during the year 1999 or 2000 whichever was later. In short, the relaxation will not be applicable to both the examinations where the examination has been held in both the years but will be applicable to the last examination held in a circle under 15% quota and shall not be a precedent for any future examination.

13. These are the averments on which the writ petition has been move and as would appear from the prayers and the ground made out in the writ petition the petitioners have prayed for direction upon the authorities to take step for sending the petitioners for J.T.O. induction training as per the list published on 24.4.1998 on the basis of screening test held on 29.1.1995. The petitioners have challenged the Notification by which the standard of eligibility in case of candidates who are within 15% quota has been relaxed.

14. Some candidates (6 in number) who are in the same group of 35% quota has filed an application for addition of party being CAN 6097 of 2003 and they have been added as parties and they have filed their affidavit-in-opposition to the main writ petition. Another application has been filed by the same other applicants being CAN 6098 of 2003 with a prayer for vacating adinterim order of injunction passed in the writ petition. This application for vacating has been taken up for hearing also along with main writ petition. An application has been filed by 48 applicants claiming that they belonged to 15% quota and this application No. 5727 of 2003 has also been allowed and they have been added as party respondents. Accordingly, these 48 applicants have also filed an application for vacating the interim order passed in the instant writ petition and the said application for vacating has also been taken up for hearing along with the main writ petition. As such, affidavit-in-opposition has been filed on behalf of the respondent No. 2, the added respondents belonging to 35% quota and the added respondents belonging to 15% quota and the reply to all these oppositions have been filed on behalf of the petitioners.

15. Admittedly, the position remains that for the purpose of appointment in the post of Junior Telecom Officer (J.T.O.) a training is required and after the training

one can be promoted and/or appointed as J.T.O. being successful in the training. It is also admitted that for the post of J.T.O. there are three groups and quotas have been fixed and this fixation of quota is admitted and not under challenge. The fixation of quota is in the following manner:--

1. 50% from outsiders as direct recruit and out of the rest 50%, 35% out of the departmental candidates by way of promotion from the feeder posts being Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants, Wireless Operators and Telecom Technical Assistants and the rest 15% are to be recruited by promotion of departmental candidates through a competitive examination and in case of these 15% candidates their eligibility criteria are different. Admittedly, the eligibility criteria of these 15% candidates as prescribed is as follows:-

The competitive examination for promotion to the cadre of Junior Telecom Officer "15% departmental competitive quota" is open to the following cadre:

(i) They are on regular establishment and working in Telecom Engineering Branch of the department including those working in the office of Chief General Manager, Telecom Circle/Districts: other than:

(a) Transmission Assistants, Telephone Inspectors, Telecom Technical Assistants, Auto Exchange Assistants and Wireless Operators,

(b) Plumbers/Sanitary Inspectors/Conservancy Inspectors.

(ii) Working in Telecommunication Factory other than those borne in on Industrial Establishments.

(iii) Borne on the Regular Establishment and working as the Accounts Clerks in the accounts wing under the Telecommunication Circles.

(iv) Borne on the Regular Establishment and working as works clerks Grade-I & II. Work Assistants, Draftsmen, Jr. Architect and electricians in the civil wing under Telecom Circle:-

Provided that--(a) they have passed High School/Matric Examination or its equivalent and have completed five years regular service or

(b) they possessed the qualifications mentioned below and have three years regular service:-

Bachelor of Engineering/Bachelor of Technology from a recognised University in any of the following disciplines:-

(i) Mechanical Engineering, (ii) Electrical Engineering, (iii) Telecom Engineering, (iv) Electronics, (v) Radio Engineering, (vi) Computer Science or Bachelor of Science or Bachelor of Science (Honours) with Physics and Mathematics as main/elective/subsidiary/optional/additional subjects.

(c) They are not above the age of 40 years (45 years in case of SC/ST

candidates) on the crucial date. The crucial date for determining length of service and age for the purpose of eligibility shall be on 1st July of the year for which application for recruitment are called for."

16. It, therefore, distinctly appears that 50% direct recruits are excluded from the purview of this writ petition and out of the rest 50% the petitioners belong to the quota of 35% departmental candidates. It is also distinguished and clear that though in different ways and different process but these 35% candidates and 15% candidates both are to complete successful training before promotion to the post of J.T.Os.

17. The allegation of the petitioners have been referred to above and the answers on behalf of the respondent No. 2 that is the BSNL authority is that the petitioners cannot have any grievance Inasmuch as their quota is different and in any event they will not be recruited within the quota of 15%. The summary contention of the added respondents who belonged to 15% quota are also in the same line. According to them, they constitute a different class altogether and in any event their quota and eligibility criteria are totally different from the petitioners who come from these 35% quota.

18. Mr. Ganguly appearing for the petitioners submits that all the candidates whether from 35% quota or 15% quota will be promoted to the post of Junior Telecom Officers and after promotion interse seniority will be affected if the candidates belong to 15% quota are given extra facility by relaxing their eligibility standard and in this mariner they will be junior to the said candidates who will be promoted to the post of Junior Telecom Officer from 15% quota. Mr. Ganguly submits that in 1999 and 2000 examination those candidates out of 15% quota who could not succeed now by relaxing their eligibility standard by the impugned Circular dated 10.3.2003 the unsuccessful candidates have been made successful. On the other hand the candidates of 35% quota who have become successful in the screening test for induction training for promotion to J.T.Os. and whose results have been published in the year 1998, they are still waiting in the queue and the way, the vacancies are being filled up from these 35% quota candidates. Another 8 years will be required to exhaust, the said list of successful candidates who became successful in 1995 screening test. According to Mr. Ganguly this relaxation of standard in case of 15% is illegal, arbitrary and mala fide inasmuch as by relaxation of the standard a discrimination has been sought for. Mr. Ganguly submits that the authorities relaxed this standard though as one time measure but with retrospective effect as a result of which the unsuccessful candidates became successful. Mr. Ganguly relies on a decision reported in Tata Cellular Vs. Union of India, . Mr. Ganguly laid stress of these observations made by the Hon"ble Apex Court in paragraph 93 and 94 of this judgment is quoted herein below-

"93. In Union of India v. Hindustan Development Corporation this Court held thus (SCC p 515, para 9)

".....The Government had the right to either accept or reject the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds. In *Erusian Equipment & Chemicals Ltd. v. State of West Bengal* this Court observed as under (SCC p. 75, para 17)."

"When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions", the activities of the Government have public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure."

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must, have freedom of contract. In other words, a fair play in the joints is necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesday principle of reasonableness (including its other facts pointed out above) but also must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

2. Whether the selection is vitiated by arbitrariness?"

19. Mr. Ganguly also referred to another decision reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, which is a judgment of the Constitutional Bench of the Hon'ble Apex Court (*Smt. Maneka Gandhi v. Union of India*) Mr. Ganguly relied on the observations made in paragraph 61 of this judgment which is quoted herein below-

"61. This Court speaking through Hegde, J., in *A.K. Kraipak and Others Vs. Union*

of India (UOI) and Others, , quoted with approval the Lord Parker, CJ., and proceeded to add: (at p. 156 of AIR).

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.....Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George Vs. University of Kerala and Others, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whatever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case."

20. This view reiterated and re-affirmed in a subsequent decision of this Court in The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

21. Mr. Ganguly submits that the Hon"ble Apex Court in this judgment has clearly observed that principle of natural justice are to be followed in administrative action and/or in Governmental action but in this case principles of natural justice has been grossly violated and description as given above is apparent.

22. Mr. Ghosh appearing for the respondents authorities submitted that neither there is discrimination nor there is violation of principles of natural justice. Mr. Ghosh further submitted that 15% quota is exclusively segregated and they are to face competitive examination and if there is vacancy out of these 15% quota those vacancies cannot be filled up by candidates from 35% quota. Naturally there is no reason as to why the petitioners will be affected by relaxation of standard which is the result of a policy decision of the authority. Mr. Ghosh relied

on the following decisions and submitted that judicial review of the administrative action is confined to a specific reason. Mr. Ghosh submitted that if reference is made of the decision made in the case of Tata Cellular (supra) then also it will be seen that the Hon''ble Apex Court has restricted the zone of interference in case of judicial review and has observed that the duty of the court is to convince itself to the question of legality. Its concern should be: (1) Whether a decision making authority exceeded its power, (2) Committed an error of law, (3) Committed a breach of the rules of natural justice, (4) Reached a decision which no reasonable Tribunal would have reached or (5) Abused its powers.

23. Mr. Ghosh relied on a recent decision of the Hon''ble Apex Court reported in State of Himachal Pradesh and Another Vs. Padam Devi and Others, Mr. Ghosh submitted that in this case before the Hon''ble Apex Court two schemes were formulated by Government to give training to unemployed educated youth in rural areas. Facility of additional training provided exclusively for trainees under one scheme, objective and purpose of training under two schemes and eligibility criteria there for are totally distinct and well defined and classification between candidates under two schemes founded on intelligible differentia and refusal was made to give additional training to trainees under other scheme and Hon''ble Apex Court observed that this action is neither arbitrary nor discriminatory. Mr. Ghosh relied on paragraphs 15, 16 and 17 of this decision which are quoted hereinbelow:-

"15. The appellant has give reasons why it made special provisions for the Gopal Sahayaks, reasons which in our view cannot be termed to be irrational or arbitrary The Dairy Scheme was for small landlords, who came and continue to come from villages in the milk shed areas. The object of the Dairy Scheme was not only to provide a steady source of income for such small land holders but also to develop the production of dairy products. All applicants under the scheme fulfilling the requisite criteria were allowed to participate. There was no process of selection. The training was given and the facilities were afforded to the candidates under the Dairy Scheme with both these objects in view. The emphasis in the training was in cattle rearing and fodder raising for such purpose. The course on the treatment of animals was limited and subsidiary to this main object. The Government assistance to candidates under the Dairy Scheme was directed towards helping them set up dairy farms by providing them cattle after completion of their training and the finances requisite for rearing cattle. The candidates had also given undertakings to take up cattle rearing.

16. The candidates under the Veterinary Scheme on the other hand were not landholders but had to be permanent residents of the panchayat where they would ultimately serve. The applicants had to be selected by a committee set up under the Scheme. The object of training Gopal Sahayaks under the Veterinary Scheme was to equip the candidates to prepare them to practice basic veterinary medicine at the panchayat level. The assistance to Gopal Sahayaks after

completion of the training was limited to a period of service of 12 months with Veterinary officer at an honorarium of Rs. 350/- and kits of veterinary medicines and for artificial insemination.

17. The classification between the candidates under the two schemes was therefore distinct and clearly defined as regards the eligibility criteria of candidates, the choice of candidates, the training and post-training assistance and most importantly the objectives of such training. The distinction made between the candidates of the two schemes was permissible according to the principles enumerated by this Court as the classification was founded on an intelligible differentia which distinguished Gopal Sahayaks from the Dairy farmers. The further question remains, did this differentia have a rational relation to the object sought to be achieved by the policy decision? The Veterinary Scheme was not concerned with any productive activity as the Dairy Scheme was. The Gopal Sahayaks were trained to set up practice to render basic veterinary services at the panchayat level. When this possibility was effectively blocked by the setting up of dispensaries to serve the Panchayats, it was not unreasonable for the Government to consider the Gopal Sahayaks for appointment in the dispensaries after the additional training particularly when the training as Veterinary Pharmacists was to be a stepping-stone to employment in the dispensaries. The appellant took the decision to train Gopal Sahayaks having assessed the need for Veterinary Pharmacists in the State, the special training already undergone by the Gopal Sahayaks, and their inability in the changed scenario to otherwise be gainfully employed as independent para-veterinary doctors. As we have already noted the Dairy Scheme was aimed at making the candidates dairy farmers thereby also boosting the rural economy. It was not necessary for the candidates under the Dairy Scheme to take up training as Veterinary Pharmacists to fulfil their role as dairy farmers. If the candidates of the Dairy Scheme had been allowed to take up training as Veterinary Pharmacists, this might have equipped them to work in dispensaries but it would have defeated the very purpose of the Dairy Scheme. Besides, the respondents had chosen to avail of the benefits of the Dairy Scheme. They are, therefore, obliged to accept the terms and conditions on which the benefit was made available namely take up cattle rearing. In the circumstances, the refusal of the appellant to treat the respondents on par with the Gopal Sahayaks as far as the additional training as Veterinary Pharmacists was concerned was no unwarranted, The respondents having failed to discharge the onus of establishing their allegations against the appellant of hostile discrimination, it was not for the Court to interfere with the decision taken by the appellant. The decision of the High Court is accordingly set aside and the appeals allowed without any order as to costs."

24. The learned counsel for the added respondents applicants, Mr. Amjad Ali, senior advocate, submitted that his clients that is the six applicants who have been added as respondents though they belonged to 35% quota but they are senior to the petitioners in the length of service in their original cadre and it is

also not disputed that when sending for training for promotion to J.T.Os. The seniority will be taken into consideration out of the successful candidates who were successful in the screening test considering their length of service in the original cadre. The learned senior counsel Mr. Ali apart from this submissions supported the contention of Mr. Ghosh and submitted that the candidates of 35 % quota are not going to be affected by the order of relaxation of the standard of eligibility. Mr. Ali laid stress that when promotions are to be given in the post of J.T.Os. then the question of seniority should be taken into consideration and the length of service should be considered to be the criteria for interse seniority amongst the Junior Telecom Officers. Mr. Neogi appearing for added respondents belonging to 15% quota relied on three decisions reported in 1985(1) SLR 369, 1988(1) SLR, 148 1993(1) SLR 657. Mr. Neogi submitted that Recruitment Rules of 1996 have not been challenged and without challenge of the Rules the petitioners cannot come forward and submit that the policy decision taken by the authority on the basis of the Rules is illegal or mala fide and unless a policy is proved to be a mala fide the Court should not interfere. Mr. Neogi appearing for 48 candidates out of 15% quota submitted that their quota is totally different. Their eligibility criteria are totally different and in any way they cannot be compared or tagged with these candidates of 35% quota. Mr. Neogi submitted that when candidates are not available to fill up the vacancies of this 35% quota then the power of relaxation of the eligibility criteria is there in the hands of administrative authority.

25. Heard and considered the submissions made by the learned counsel for the respective parties. Firstly, I am to exclude 50% who are direct recruits. Then remain rest 50%. Out of these rest 50%, 35% and 15% are the sub-divisions and they come from different channels. It is also not disputed that Recruitment Rules are there of 1996 which are starring on the face and have not been challenged or set aside either. It is also a settled position of law that chance of promotion is not a vested right which can be claimed by the employees by enforcement of writ jurisdiction. Promotion is also a prerogative of the management. If, however, there is any illegality or arbitrariness in the decision making process that is in the matter of promotion then there is even a scope for interference but in a judicial review unless a policy decision based on intelligible criteria established to be ex facie mala fide, there is no scope for interference of writ Court in this regard. It is also admitted that if there is vacancy out of these 15% quota then also the candidates of 35% quota are not going to get in chance in those vacancies. It appears clearly from the order impugned dated 10.3.2003 that since the vacancies which were there to be filled up from these 15% quota candidates could not be filled up because of non-availability of successful candidates the authority was bound to relax the standard of eligibility of those candidates belonging to 15% quota. This is a stage when the writ petition has been moved for induction in the training for the purpose of promotion to the post of Junior Telecom Officer out of these successful candidates who are inducted in training. This is not the stage of promotion. This is pre-promotion training

induction stage and it can be rather aid that this is a pre-matured stage when it can be said that after being promoted to the post of Junior Telecom Officer who will be treated as senior and who will be treated as junior in that particular cadre of Junior Telecom Officer. However, non-inclusion in the training of 35% quota candidates and inclusion in the training of 15% quota candidates can draw an apprehension in the amount of the 35% quota candidates but unless that apprehension comes to finality or reaches to stage an arbitrariness the petitioners merely an apprehension cannot throw a challenge on it.

26. In my view, the petition appears to be based on apprehension and the relaxation of the eligibility standard for induction in the training out of the 15% quota cannot be said to be discriminatory and in this regard I respectfully rely on the decision reported in State of Himachal Pradesh and Another Vs. Padam Devi and Others, . The chance of promotion does not confer any right at the same time unless the petitioners can prove remaining in the zone of consideration for promotion, they have been discriminated. There is no scope of judicial interference. As observed earlier the policy of relaxation is based on intelligible criteria and not discriminatory and this writ petition is based on mere apprehension. In my view judicial review or judicial interference should not be done at this stage. I, therefore, do not find any merit in the writ petition. The writ petition is, therefore, dismissed and there will be no order as to costs.

All interim orders stand vacated.

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