CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/01389/2014

HYDERABAD, this the 2nd day of December, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

U. Babaiah, S/o. Sri U. Gangaram,
Aged about 45 years,
Occ : Telecom Supervisor,
O/o the SDE (PLG-CFA), GM-TD,
Nizamabad, R/o Nizamabad.

...Applicant

(By Advocate : Mr. Pavan Murthy, Proxy counsel for Mr.V.Venkateswara Rao)

Vs.

1.The Secretary to Govt. of India,
Dept. of Telecommunications,
New Delhi.

2.The Chairman-cum-Managing Director,
M/s Bharat Sanchar Nigam Limited,
Sanchar Bhavan, New Delhi.

3.The Chief General Manager, Telecom,
M/s Bharat Sanchar Nigam Limited,
A.P.Circle, Abids, Hyderabad.

4. The Assistant General Manager (Rectt.),
O/o. CGM Telecom, BSNL, AP Circle,
Room No.411, Door Sanchar Bhavan,
Nampally Station Road, Hyderabad-500 001.

5. The General Manager, Telecom Dist.
M/s Bharat Sanchar Nigam Limited,
Nizamabad. ....Respondents

(By Advocate : Mr. M.C. Jacob, SC for BSNL)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to selection of the applicant as JTO based on the relevant exam conducted by the respondents.

3. Applicant, who belongs to the SC community, while working as a Telecom Supervisor in the respondents organisation, appeared in the JTO examination under 15% quota conducted by the respondents on 15/16.5.1999 (for short "1999 Exam") and failed in the same by securing **34.25%** aggregate (**137/400** marks) against the minimum relaxed standard of 33% required to be secured by SC/ST candidates, in each of the prescribed 4 papers to qualify. Respondents conducted another exam for the same cadre on 16/17.9.2000 (for short "2000 Exam") by further relaxing the qualifying minimum standards for SC/ST candidates to 20% aggregate vide memo dated 10.3.2003. Applicant represented on 1.9.2014 to extend the relaxed standard of 2000 exam to the 1999 exam which was rejected and hence, the OA.

4. The contentions of the applicant are that the Tribunal in OA 276/2003 has set aside the clause that the relaxed standard of 20% aggregate for SC/ST candidates shall apply for 2000 exam and not to 1999 exam. DOPT has restored the relaxed standards to SC/ST candidates vide memo dated 3.10.2000 with prospective effect. Hon'ble Apex Court vide its judgment in S.Vinod Kumar, 1996 (6) SCC 580 withdrew relaxations for SC/STs, leading to issue of DOPT memo dated 27.7.1997, which was overruled subsequently by its own judgment in ***Rohtas Bhankhar &***

Others v. U.O.I. & Anr. in Civil Appeal No. 6046 – 6047 of 2004, on 15.7.2014 by setting aside the DOPT memo dated 22.7.1997. Therefore, ***Rohtas Bhankhar*** judgment applies to the case of the applicant. Respondents have indulged in discrimination among the same class of employees, thereby violating Articles 14, 16 and 335 of the Constitution. Even candidates, who got 0 marks in some papers and got the aggregate of 20% were selected. Applicant is entitled to be selected based on relaxed standards existing prior to S.Vinod Kumar judgment. An incompetent authority has issued the impugned order without application of mind.

5. Respondents in their reply statement contend that the though applicant got aggregate of 137 marks out of 400 marks i.e. 34.25%, he secured only 22 and 17 marks in Paper II and III respectively in the 1999 exam against the relaxed minimum qualifying standard of 33% in each subject, fixed for SC/ST candidates and hence was disqualified. Therefore, ***Rohtas Bhankhar*** judgment is not applicable. To fill up the unfilled vacancies, 2000 exam was conducted by relaxing the minimum qualifying standard for SC/ST to 20% aggregate vide letter dated 10.3.2000 with a rider that the relaxation will have prospective effect and is applicable only for the 2000 exam. Applicant did not appear in the exam. The proviso of relaxing the standard only for the 2000 exam was set aside by the Tribunal in OA 276/2003. No employee was given the benefit of relaxation of standards in the interregnum period of withdrawal of relaxed standards for SC/ST employees on 27.7.1997 and their reintroduction on 3.10.2000 by DOPT. Further, applicant is challenging the result of 1999 exam results

declared on 25.11.1999 after 15 years and hence, OA is barred by limitation. MA for condonation of delay was not filed.

6. Heard both the counsel and perused the pleadings on record.

7. I. The preliminary objection of the respondents is that there has been delay in filing the OA is not sustainable, since on the date of admitting the OA, no objection was raised by the respondents.

II. Applicant appeared in the JTO exam in 1999 exam and got aggregate of 137 marks out of 400 marks i.e. 34.25%, while securing only 22 and 17 marks in Paper II and III respectively against the relaxed standard of 33% for SC/ST candidates in each of the 4 papers in which the applicant was tested. Later, respondents conducted the 2000 exam for the same cadre by further relaxing the standards to SC/ST candidates to 20% in aggregate vide letter dated 10.32003. This relaxation was applicable to 2000 exam and not to 1999 exam. Applicant prays for applying the relaxation of 20% to the 1999 exam, otherwise it would tantamount to discrimination amongst same class of employees. Applicant relies on the Hon'ble Supreme Court judgment in ***Rohtas Bhankhar*** Case wherein its own judgment in S.Vinod Kumar of withdrawing relaxed standards to SC/ST employees, was overruled on 15.7.2014. Thereby DOPT issued memo dated 3.10.2000 restoring the relaxed standards.

III. In the background of the above details, it is seen that the applicant did not qualify in each paper in the 1999 exam even after the relaxed standards of 33% for SC/ST candidates was made applicable. Therefore, the judgment of ***Rohtas Bhankhar*** relied upon by the applicant

would not be applicable to the case of the applicant since the cited judgment ordered relaxation of standards for SC/ST candidates overruling S.Vinod Kumar judgment. Thus, respondents *albiet* provided the relaxation, applicant did not make use of it by securing the minimum required relaxed percentage in each paper. Interestingly, applicant did not even appear in the 2000 exam and neither did he explain as to why he did not appear in the 2000 exam. Without appearing in the 2000 exam and seeking relaxation standards associated with it, to be extended to the exam conducted in 1999 is difficult to appreciate, more so when he has availed the benefit of the relaxed standard of 33% even in the 1999 exam.

Further, applicant was aware that the minimum relaxed qualifying standard for 1999 exam was 33% in each paper. Knowing about this condition he participated in the exam. Had the applicant cleared the exam, he would not have raised the issue of further relaxation. Only when he failed in 1999 exam and after the standards were further relaxed in 2000, applicant approached the Tribunal after 15 years of the results of the 1999 exam were announced. Having taken a chance to participate in the exam, applicant has foregone the right to challenge the relaxation percentage of 33% provided for SC/ST candidates in 1999 exam. There is no malafide attributed to the examination process nor is there any glaring fallacy in the examination process. After appearing in the exam and on failing to secure the minimum qualifying standard in the exam, applicant cannot turn around seeking further relaxation of standards as per 2000 exam. We take support of the observations of the superior judicial fora as under in stating the above:

a. Hon'ble Supreme Court in ***Air Cmde Naveen Jain vs Union Of India*** on 3 October, 2019, Civil Appeal No.3019 of 2017, as under, in stating the above:

> *"17. In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129], candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p.318, para 18) 14 (1995) 3 SCC 486 15 (2017) 4 SCC 357*
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> *18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."*

b. Recently, Hon'ble Punjab and Haryana High Court in 2019 has reiterated the above legal principle in CWP No.13069 of 2018 on24.07.2019 in Ramesh Kumar Vs. Union of India and others as under:

> *"The law with regard to estoppel challenging the advertisement of selection process having participated is no longer res integra. The grievance of the petitioner of not adhering to guidelines at Annexure P-8 is neither here nor there as guidelines at Annexure R-4 deals with National HIV Counselling and Testing Services (HCTC). Once petitioner has not secured the marks and rightly so has been kept in waiting list at serial no.2 whereas other selected candidate secured higher marks vis-a-vis petitioner. The selection process cannot be challenged until and unless there is malafide or glaring fallacy. The Court cannot assume the role of an expert and form the different opinion in determining the eligibility, in other words, there is no barometer to assess the certain illegality or irregularities as attempted. In the absence of same, I am of the view that grievance expressed is wholly far-fetched. No ground for interference is made out. Dismissed.*

In view of the above verdicts, applicant is not eligible for the relief sought. Therefore, in the context of the observations cited supra, the direction given

in the OA 276/2003 by this Tribunal wherein clause of applying relaxed standard of 20% only to the 2000 exam was set aside, would also not come to the rescue of the applicant.

IV. To sum up, the applicant did not clear the 1999 exam though relaxed standard of 33% in each paper was provided. After appearing and failing in the exam he loses the right to challenge the conditions of the exam. Applicant without participating in the 2000 exam prays for relaxed standards of this exam to one another exam. This is not a rational plea since if any respondent organization were to allow such relaxations then the entire examination system would collapse. There would have been many candidates who would have faced the same predicament but would have reconciled by the facts that the mandatory conditions stipulated for an exam are unalterable. Applicant has to be abide by the mandatory conditions prescribed for an examination since they are applicable to all those who are similarly placed like the applicant. Any relaxation granted to the applicant for having approached the Tribunal would mean doing injustice to those who did not. Hon'ble Apex Court has made it crystal clear that the conditions prescribed in the conduct of an exam have to be invariably followed ***in State of Tamil Nadu & Ors v G. Hemalathaa & Anr in Civil Appeal No. 6669 of 2019****, decided on 28.8.2019,* as under:

> *10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:*
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> > *"13…. exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the*

> *principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules."*

11. Roberts, CJ. in Caperton v. A.T. Massey held that:

> *"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."*

> *12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."*

The condition laid in the instant case was that the applicant has to secure a minimum relaxed percentage of 33% marks in each of the papers in the 1999 exam. Applicant could not secure the same and stands disqualified as per the above verdict. If the Tribunal were to grant the relief sought, it would obviously mean laying down a bad legal principle. Hence we desist to do so. Other averments made by the applicant lack relevance for reasons elaborated in paras supra.

V. In view of the aforesaid circumstances, the OA fails. Hence dismissed, with order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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