

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION Nos. 168 AND 169 OF 2009

Date of Order : 11.02.2010.

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

Gajendra Thakkan S/o Shri B.R. Thakkan, aged about 29 years, resident of B-32, Arvind Nagar, Ratanada (Air Force), District Jodhpur, Rajasthan at present working as TTA Trainee, RTTC Jaipur.

....Applicant in OA No. 168/2009.

Dilip Singh S/o Shri Govind Singh, Aged about 23 years, R/o 21/283, Chopasni Housing Board, District Jodhpur, Rajasthan, at present working as TTA Trainee, RTTC, Jaipur.

....Applicant in OA No. 169/2009.

For Applicant - Mr. P.S.Bhati, Advocate.

VERSUS

- 1- Bharat Sanchar Nigam Ltd., through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harishchandra Mathur Lane, Janpath, New Delhi - 110 001.
2. Assistant Managing Director (Recruitment), Office of Chief Managing Director, Bharat Sanchar Nigam Limited (BSNL), Sub Division, Jaipur, Rajasthan.
3. Divisional Engineer (Administration), RTTC, Office of Chief Managing Director, Bharat Sanchar Nigam Limited (BSNL), Jaipur, Rajasthan.
4. Divisional Engineer (Administration) Office of Chief Managing Director, Bharat Sanchar Nigam Limited (BSNL), Jodhpur, Raj.

...Respondents in the OAs

For Respondents - Mr. Vijay Bishnoi, Advocate.

**.....
ORDER
(BY THE COURT)**

Both these cases have arisen out of the common order, the relief(s) claimed by the applicants are similar, therefore, both these applications are being disposed of by this common order. I take OA No. 169/2009 as a leading case.

**COMPARED &
CHECKED**

2- The applicant, responded to an Advertisement issued for the post of Telecom Technical Assistant (TTA) and after facing a selection process, the applicant qualified in the examination on 6.10.2008. Thereafter, on 11.1.2009, the respondents issued final

I/12

select list and in the select list for SSA, Jodhpur, in which eight candidates were selected, out of which, five candidates were declared as qualified and selected, and rest of the three candidates were qualified but these three candidates were kept in the waiting list. Apparently, the applicant stood at Sl. No. 7 and was the second candidate in the waiting list for SSA Jodhpur.

3- Since there were vacancies, the persons in the waiting list were also accommodated as they were qualified and selected. On 27.5.2009, the applicant had been selected for the training and according to him, he left his current employment as was required of him and went to join the RTTC at Jaipur for the training beginning from 22.6.2009. On 30.7.2009, the applicant was shocked to receive an order by which, the respondents terminated the training and candidature of the applicant and, therefore, he approached this Tribunal. The Tribunal vide order dated 4th August, 2009, passed the interim order enabling the applicant to complete the training. An opportunity was given to the respondents to file reply and vide order dated 15.9.2009, the crux of the issue was identified by the Tribunal in a separate order as to being the legitimate expectation to which, the applicant is entitled to if he had attended training consequent upon the selection and the prejudice which may be caused to him as he had left his then current employment and whether, the respondents are to be estoppel by promissory estoppels which may rightly arise in this matter. Therefore, the respondents were directed to specifically address their contention on these aspects as well by providing further illumination in the matter.

I/13

4- The respondents would say that there existed eight vacancies out of which five were filled and applicant was kept under OBC category even though, he had passed the test and became eligible for appointment and they say that by a mistake he was sent for training. They would further say that the applicant had not submitted the present employer's resignation certificate and not submitted necessary documentation and, therefore, the applicant has violated the terms and conditions. In short, this is a denial of a prior employment of the applicant. They say that the applicant ought to have been covered under the OC category and they further contended that that out of the two out of three vacant posts under the un-reserved category, the persons concerned did not turn up. So, two vacancies in OC category were fallen vacant and no candidate in the unreserved category could qualify the examination while securing the minimum qualifying marks for the general category.

Here, the respondents seems to be under a mistake and impression that the person who may fall in a reserved category, cannot compete for meritorious employment/appointment in the general category. This position is covered by principles and Circular of the DOP&T under the Union of India as well as more than 25 rulings of the Hon'ble Apex Court, therefore, if that alone was the criteria, the defence of the respondents would fail. A person, who may have been selected under the OBC category, if he is qualified, can also be taken in the merit as well and in the present case, it appears that the applicant is to be considered under the merit category as he had qualified.

The contentions of the respondents are controverted by the applicant in rejoinder. He would aver that apparently, the BSNL had

1/14

issued a letter No. 250-2/2009-Pers.III dated 1.6.2009 following large scale complaints that a lot of vacancies remain un-fulfilled as a number of candidates were unable to pass the minimum bench mark required of them in the test and the interview. This will again point to the desirability of the applicant vis-à-vis merit as even though, a higher quantum of candidate failed in the examination, he was able to pass the same. Later on, this relaxation ground enabled some other candidates of some categories to be also in the zone of consideration. But, it is pointed out that in Clause (iii) and Clause (iv) of the said letter, that all the persons who are selected prior to this relaxation will retain the seniority in the said list and everybody, who comes after the relaxation, will be treated as junior. This can only mean one thing that the first select list has to be exhausted before the exemption can be given effect to. Further, it is pointed-out in Clause (v) that the Circles who have already announced the result but have not adequate number of successful candidates may further extend the merit/waiting list, as per the above instructions. The applicant would point-out this to mean that only after exhausting successful candidates, the effect of relaxation can be granted to others but, all others had not actually passed the examination. The applicant had produced a certificate issued by the respondents to the applicant to the effect that he has successfully completed the training course and met the requirements of the training institute i.e. attendance, study, and project work vide Certificate issued by the BSNL dated 28.8.2009. He had also produced a relieving order from the course dated 28.8.2009 which shows that the person at Sl. No. 18 has left the training and the persons mentioned at Sl. No. 5 and 24 passed in second attempt. Therefore, having successfully completed the training course and entitled to a legitimate expectation on being

selected, he is entitled to appointment. Also on a reading of the instructions for relaxation, it appears that it can only mean that the relaxation would commence in effectiveness only after exhausting the successful candidates. It is also pertinent to note in this case that the reserved category candidates are also entitled to compete in open market category and make a claim for themselves, if they are otherwise entitled. On these grounds, the O.As are allowed and the respondents are directed to appoint the applicants to the post of TTA as a regularly selected candidate as a due consequence of his selection and this order. This order will come into effect immediately and applicant is entitled to have his service to be counted along with others who had completed their course. The O.As. are allowed to the extent as above and disposed of accordingly.

Sd -

(Dr.K.B.Suresh)JM

jrm

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Dated 12.2.2010

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न्यायाधीश (न्याय)
Section 44 (Judl)
केन्द्रीय न्यायाधीश
Central Administrative Tribunal
न्यायाधीश (न्याय)
केन्द्रीय न्यायाधीश

दिनांक 17/12/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 9/12/16
को भाग-II व III नष्ट किए गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर