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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.110/2010.

Date of decision: 23.11.2012

[ORDER RESERVED ON 13.09.2012]

CORAM :

**HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER.
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.**

- 1- Laxman Meena, aged about 45 years, S/o Shri Dhula Ji, R/o H.No. 5, Telecom Colony, Prabhat Nagar, Udaipur (Raj).
- 2- Makbool Ahmed aged about 44 years, S/o Shri Rasool Mohammed, R/o 365/12 Sindhi Sarkar Ki Haveli, Kheradiwala, Udaipur (Raj).
- 3- Roop Lal Dangi aged about 41 years, S/o Shri Nandaji Dangi, R/o Khakhdiya Post Matoon The. Girwa, Udaipur (Raj).
- 4- Nathu Lal Meena aged about 42 years, S/o Shri Limba Ji Meena, R/o Telecom Colony, Manwakheda, Sector - 6, Udaipur (Raj).
- 5- Sawa Lal Meena aged about 46 years, S/o Shri Khemaji Meena, R/o Telephone Exchange Jaabarmines, Udaipur (Raj.).
- 6- Shankar Lal Meena aged about 44 years, S/o Shri Heeraji Meena, R/o Telephone Exchange, Kunthwas, Udaipur (Raj).
- 7- Shiv Lal Prajapat aged about 34 years, S/o Shri Heeraji Prajapat, R/o Telephone Exchange, Kheroda, Udaipur (Raj).
- 8- Nathu Lal Meena Aged about 51 years, S/o Shri Devaji Meena, R/o Telephone Exchange, Bana, Udaipur (Raj).
- 9- Bhagwan Lal Meena Aged about 44 years, S/o Shri Pema Ji Meena, R/o Telephone Exchange Gogunda, District Udaipur (Raj).
- 10- Badri Lal Meena Aged about 43 years, S/o Shri Bhera Ji Meena, R/o Village and Post Som Viya Falasia Tehsil Jhadol, Ddistrict Udaipur (Raj).

All employees are working in Group 'D' cadre under the respondent No. 4.

.....Applicants

[None]

Versus

1. Bharat Sanchar Nigam Limited, Through, its Managing Director, Bharat Sanchar Nigam Limited Bhawan, Janpath, New Delhi.
2. Assistant General Manager (PERS) 3rd -5th Floor, Bharat Sanchar Nigam Limited Bhawan, Janpath, New Delhi.
3. Chief General Manager, Bharat Sanchar Nigam Limited, Rajasthan Telecom Services, Sardar Patel Marg, Jaipur.
4. General Manger, Bharat Sanchar Nigam Limited, District Udaipur (Raj).

.....Respondents

[By Mr.Jagdish Vyas, Advocate.]

ORDER

PER B.K.SINHA, ADMINISTRATIVE MEMBER :

This OA has been filed against the order No.E-162/TM/Dept.Exam/09-10/62 dated 29.3.2010 of the respondents in not considering the applicants for competing in the Limited Departmental Competitive Examination to the cadre of Telecom Mechanic.

2. Relief(s) sought:

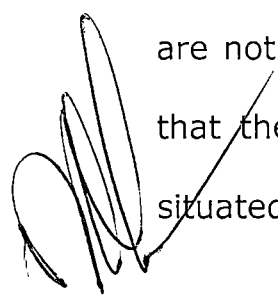
- (a) *An appropriate order or direction may kindly be issued in favour of the applicants and the respondents may kindly be directed to consider the case of the applicants for competitive examination and allowed to permit in the examination and if they success in the examination then they permitted to promotion or Telecom Mechanic; and*
- (b) *Impugned condition by which imposed passing 10 standard for the regular mazdoors and casual mazdoors may kindly be declared ultra-vires and rejection letter dated 29.3.2010 by which application forms of the petitioners were rejected may kindly be quashed and set aside; and*
- (c) *Respondents my kindly be directed to allow petitioners in the examination for the departmental competitive examination for promotion of the cadre for the year 2008;*
- (d) *During the pendency of this writ petition, applicants may kindly be permitted to appear in examination for the promotion of cadre of Telecom Mechanics for the year 2008.*
- (e) *Any other order or direction which this Hon'ble Tribunal may deems fit and proper in the facts and circumstances of the case may kindly be granted in favour of the applicants.*
- (f) *Cost of the Original Application may kindly be awarded to the applicants.*

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(g) *Applicants are filed joint original application which may kind allowed.*

Case of the applicants:

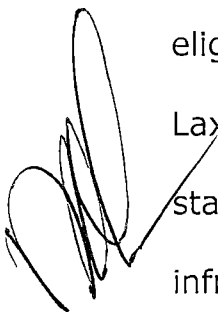
3. Applicants were initially appointed on temporary basis and later their services regularized as regular employees [A1]. Prior to being absorbed in BSNL, applicants were employees of Department of telecom. As per Annexure.A2 order dated 27.4.1994, sub clause (b) of Clause (iii) Regular Mazdoors and Temporary Status the Group 'D' employees of Telecom Engineering Wing were not required to have passed 10th standard in order to become eligible for appearing in the eligibility test. However, as per the new Rule of 2002 [A3] the eligibility qualification of passing 10th standard has been introduced. All applicants filed their application to appear in the examination scheduled for 25.4.2010 in response to a notification dated 10.12.2009. However, the respondents rejected their request and one of the applicant received cancellation letter [A5] for the reason that he does not meet the qualification of 10th standard required for the test. Being aggrieved with this rejection the applicants have filed the instant O.A. on the ground that their service conditions will not undergo a change with their absorption in the BSNL as Regular Mazdoors were eligible for recruitment test for higher post in Cadre-C, even though they have not passed the 10th standard in the Telecommunication Department. Hence, the amended rules introduced by the BSNL are not applicable to the applicants. The applicant further allege that the respondents are trying to discriminate through similarly situated employees by introducing the minimum educational



qualification of 10th standard, which is arbitrary, discriminatory and against the provisions of Art.14 and 16 of the Constitution.

Stand of the respondents:

4. The respondents have filed their counter affidavit opposing the prayers in the original application. They submit that the post of TM is SSA cadre post and SSA wise vacancies were advertised. The applicants who were working in SSA Udaipur as Regular Mazdoors applied for promotion to the post of TM through LDCE for Udaipur SSA. In view of Telecom Mechanic (Recruitment) Rules, 2002 since the applicants did not possess the requisite qualification, they have not been permitted to sit for the examination. All applicants had submitted their option for absorption in the BSNL following its formation w.e.f. 1.10.2000 and had given undertaking in writing that absorption in BSNL they shall be governed by the Rules and Regulations of this organisation. Their options were accepted and they were absorbed in BSNL w.e.f. 1.10.2000 and their services were regularized vide order dated 11.4.2001 [A5]. Under Rule 2000 (supra) different methods of recruitment, different eligibility criteria have been prescribed. As per Column. 12 of Schedule to the Rules, the criteria of eligibility for appearing in LDCE has been prescribed, by which those who possess the 10th standard qualification only can appear in the eligibility test. The rejection of the application of the Ist applicant Laxman Meena was made because he had passed only 8th standard. No fundamental right of the applicants has been infringed and in absence of the requisite educational qualification,



the applicants cannot have any claim for promotion to the post of TM. The respondents, therefore, pray for dismissal of this application.

Facts- in- issue:

5. On having carefully perused the the pleadings of the rival parties, the documents adduced and having heard the arguments of the learned counsel for the parties, the only issue to be examined is that whether there some discrimination has been created against those employees who had been appointed under Rules and Regulations framed by the department of Telecommunication and have since been absorbed by the BSNL by introducing a higher qualification to eligibility. A minimum educational qualification of Xth standard is prescribed and it has to be seen that whether this is against the provisions of Articles 14 and 16 of the Constitution. It stands admitted that the minimum education qualification is Xth pass which the applicants do not meet. However, the ground that the applicants have taken is that whether the group 'D' servants and their pay scale and other service conditions are the same as other employees of Group 'D'. Hence, by imposing of different set of qualifications for them, the respondent organization is discriminating amongst two groups of the same genre. There are only four types of services and the applicant falls under Group 'D' services. Their service conditions and pay scales being the same different qualifications cannot be prescribed for them. This point has been denied by the respondent organization who have stated a minimum eligibility criteria of Xth pass has been prescribed under the Rules of 2002. Since the

applicants did not possess the same, they cannot be permitted to appear in the examination. They have further submitted that while being absorbed in BSNL w.e.f. 1.10.2010 the applicants had signed their form agreeing with all observations and they shall be governed by the Rules and Regulations of the BSNL. Having agreed to this condition the applicants will be governed by the rules and regulations of the BSNL and will no longer be guided by the rules of department of Telecommunication. It is incorrect to say that the regular and casual Mazdoor fall under Group 'D' cadre regular Mazdoors who should have been granted temporary status. The rules have been framed keeping this distinction into account. The learned counsel for the respondents strongly contended that it is for the respondent organization to decide as to what qualification should be met by their employees and an exercise of this prerogative cannot be called discriminatory in any respect. Different educational qualifications have been prescribed for persons holding different posts for the purpose of recruitment for the post of Peons through different methods. The applicants cannot claim breach of their constitutional rights on this account. The casual labourers are not eligible to appear in the LDCE but, only those regular and casual Mazdoors are eligible who have been granted temporary status and are possessing a Xth standard qualification certificate. In some and substance I find that it is the employer who is the best judge to decide who will be most suitable to which job and what qualification should be prescribed for which examination. Recruitment to the post of Peon through LDCE qualifications being made from diverse sources considering the

capacity of each source, the respondents have prescribed different qualifications which they think will be adequate test/filter for those who are joining the post of T.M. As discussed earlier this is the prerogative of the employer and if he chooses to exercise the same it cannot be termed as a breach of constitutional rights or ultra vires. An identical matter has come up before the D.B. of this Tribunal at Jaipur and the matter had also been similarly argued. In this regard, the Bench held in OA 189/2010 – **Santa Kumawat**

Vs. BSNL and Anr. decided on 7.1.2011 as under :

"3. We have heard learned counsel for the parties. Learned counsel for the applicant submits that the qualification of Matriculation is not applicable to the applicant, who though admittedly is a regular Mazdoor and belongs to Group 'D' category. For that purpose, he has drawn our attention to Annexure A/1 whereby Group 'D' officials / RMs mentioned therein were granted substantive appointment in the pay scale of Rs. 4000-5800 on completion of their probation period. On the basis of this letter, learned counsel for the applicant submits that applicant belonged to Group 'D' category. The submission so made by the learned counsel for the applicant deserves out right rejection. As can be seen from Annexure A/1, 12 persons belong to Group 'D' / RMs categories were given substantive appointment after completion of probation period. Thus it cannot be said that the applicant belonged to Group 'D' category. The reference to Group 'D' in the letter Annexure A/1 belongs to those persons who have been appointed in Group 'D' category and RMs relates to those persons who were initially appointed as RMs. Admittedly, the applicant was appointed as Regular Mazdoor. In terms of provisions contained in Column No. 12 (Item No. 4) of the Recruitment Rules for the post of Telecom Mechanic, the applicant is not eligible for promotion as he does not possess requisite qualification of 10th Standard. At this stage it will be useful to quote aforesaid relevant provisions, which thus reads :

"B Through Limited Departmental Competitive Examination

- (1)
- (2)
- (3) Group 'D' officials of the Department.

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(4) RMs and Casual Mazdoors working in SSA units possessing 10th Standard qualification and have been granted temporary status by the department. (emphasis supplied).

6. The eligibility criterion for the post of Telecom Mechanic in respect of Regular Mazdoor is 10th Standard whereby there is no educational qualification for Group 'D' employees of the Department. Further the corporate office of the respondents has also issued clarification regarding holding of LDCE Examination for promotion to the post of Telecom Mechanic for Recruitment year 2008 regarding doubts received by various circles with regards to provisions of Recruitment Rules for the post of Telecom Mechanic vide letter No. 250-8/2009-Pers-III dated 29.01.2001 (Annexure A/6). At this stage, it will be useful to quote clarification given vide sr. no. 8 and 11 regarding the doubts raised by various circles which thus reads :-

S.No.	Doubt raised	Clarification
8.	Which posts are included in Group 'D' cadre and what is the minimum qualification required?	The Group 'D' cadre includes the Cadres other than Regular Mazdoor for the purpose of considering eligibility to appear in LDCE for promotion as TM. No educational qualification has been prescribed for Group 'D' in RRs.
11. 5	Whether RM can be allowed to appear in exam without passing 10 th standard as the case for Gr. 'D'.	As per the provisions of RRs, RM should have passed 10 th standard qualification for being eligible for the exam.

7. Since the applicant does not fulfill the requisite qualification as per the Recruitment Rules for the post of Telecom Mechanics in BSNL, read with clarification as reproduced above, he has got no case for our interference. We certainly do not agree with the proposition that such prescribing 10th pass for the applicants violates the provisions of Articles 14 and 16 for the reasons

discussed. We also sound a word of caution that it the organization which is the best judge of what kind of employees it requires and the courts/Tribunals cannot prescribe the same for them. The Tribunals are only there to see that there is no malafide involved, the rights of natural justice are not infringed and the statutory provisions are not infringed. In the instant case we find that none of these conditions have taken place. In view of the issues decided as above, we find that there is no merit in the contention raised in the OA and the same is dismissed without costs.


[B.K. SINHA]

ADMINISTRATIVE MEMBER


[G. GEORGE PARACKEN]

JUDICIAL MEMBER

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