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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A. NO. 348/2010

Date when reserved: 6/3/2012

Date of order: 9.3.2012

CORAM

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Inder Mal, S/o Shri Dana Ram Jinagar,
Resident of Jagjivan Ram Colony,
Near School, Bhinmal, District Jalore,
Rajasthan.

....Applicant

(By Advocate Mr. Kuldeep Mathur)

Vs.

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. The Assistant General Manager,
Office of Chief General Manager, Telecom (CGMT)
Bharat Sanchar Nigam Limited,
BSNL, Jaipur, Rajasthan.

3. Divisional Engineer (Administration)
RTTC, Office of Chief Managing Director,
Bharat Sanchar Nigam Ltd (BSNL)
Jaipur, Rajasthan.

4. The Divisional Engineer (Administration)
Office of General Manager Telecom District
(CGMT) Sirohi, Bharat Nigam Ltd.
(BSNL), Sirohi, Rajasthan.


....Respondents

(By Advocate Mr. Jagdish Vyas)

ORDER

Per: Hon'ble Dr. K.B.S.Rajan, Judicial Member

The core question involved in this O.A. is as to whether the vacancy to



the post of Telecom Technical Assistant (TTA for short) against which the applicant seeks appointment has already been consumed and as such cannot be made available to the applicant or is still available to be offered to the applicant. If the vacancy is not considered to have been consumed, and has been existing ever since the notification has been made in response to which the applicant has applied and got selected, then the right of the applicant is fully crystallized. Instead, if under the facts of the case, the vacancy got already consumed but later on, the post has become vacant within a short period, then the applicant cannot claim the said vacancy to be filled up by him.

2. Now the facts capsule: The admitted facts of the case are that the applicant was an aspirant for the post of TTA for which he had, in response to an advertisement notified on 06-10-2008, applied and he having qualified in the selection and having secured the third position in the merit list for SC candidates, was kept in the waiting list, since there were only two vacancies earmarked for S.C. Candidates. Nevertheless, the respondents got an agreement bond executed by the applicant which was to be accompanied by a demand draft for Rs 5,000/-. Annexure A-4 order dated 07-03-2009 refers. When the applicant had not been issued with any offer of appointment, he contacted the respondents who had stated that since there were only two vacancies under the reserved category and since two individuals in the merit list Nos. 1 and 2 have already been asked to undergo the training, the applicant cannot be offered the appointment. However, the respondents specifically informed the applicant that in the event of any of the two candidates aborting his training, the applicant would be considered for appointment. Letter dated 30-07-2009 vide Annexure A-7 of the OA refers. The applicant thereafter could come to know that one of the trainees (Shri Lalit Kumar, an SC candidate selected against a reserved vacancy) had left the training half

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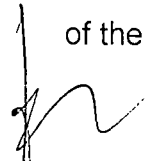
way through and thus, he had requested the respondents to consider his appointment against the same. As his request has not been favourably considered, the applicant has filed this OA seeking inter alia the following reliefs:-

(a) Respondents be directed to comply according to the order dated 07-03-2009 and accordingly issue the training letter to the applicant.

(b) Respondent be directed to allow the applicant to go through the training period and thereafter after the completion of the training period the respondent be directed to give the appointment to the applicant to the post of TTA as a regularly selected candidate in pursuance of the advertisement dated 06-10-2009 from the date when the other similarly selected candidates were given the appointment.

3. Respondents have contested the O.A. They have stated that all the selected candidates were called for joining the training of TTA from 22-06-2009. Duration of training was 10 weeks. Shri Lalit Kumar was also called to join the training vide letter dated 09-06-2009. He joined the training and after completion of 5 weeks training, he had submitted his resignation before the respondent department on 27-07-2009. After receiving the resignation he was informed to deposit the amount of Stipend, which was received by him during training period. After depositing Rs 13,938/- on 04-12-2009 by Shri Lalit Kumar, his recruitment was cancelled by the respondent department w.e.f. 13-01-2010. Thus, there was no vacant post of TTA till 13-01-2010, the date on which the recruitment of Shri Lalit Kumar was cancelled.

4. Counsel for the applicant argued that since the applicant had been asked to execute an agreement bond with a bank draft of Rs 5,000/- and since he was also informed that his case would be considered in the event of one of the two selected candidates leaving the training before completion, and as such a situation had already occurred, it was incumbent upon the respondents to consider the case of the applicant.



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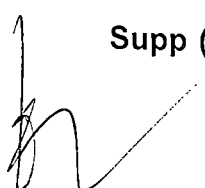
5. Counsel for the respondents submitted that once all the selected candidates joined the training, the vacancies are considered to have been filled up and waiting list has no purpose to serve. The respondents have accepted the resignation of the said Lalit Kumar only on 13-01-2010. Hence, the applicant cannot be accommodated in the training which was concluded much earlier. Counsel for the respondents also relied upon the following decisions of the Hon'ble Apex Court:-

- (i) **AIR 1997 SC 2179 (Sanjoy Bhattacharjee vs Union of India and others)**
- (ii) **(2009) 1 SCC 398 (Rajesh Burman vs Mitul Chatterjee (Burman))**

6. Arguments were heard and documents perused. Law is clear on the subject. Subject to the provisions of any rules otherwise, a wait-listed candidate can be appointed only when any of the selected candidates does not join the post when offered. The Apex Court in the case of **Gujarat State Dy. Executive Engineers' Asn vs State of Gujarat 1994 Supp (2) SCC 591** has defined the term "waiting list" and explained the scope of such waiting list in the following words:-

"A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held."

7. Referring to an earlier case of **R.S. Mittal vs Union of India (1995) Supp (2) 230**, the Apex Court in the case of **A.P. Aggarwal vs Govt. Of NCT of**



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Delhi (2000) 1 SCC 600 has held as under:-

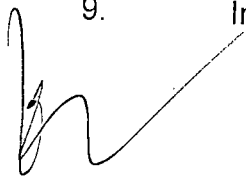
" 14. In R.S. Mittal v. Union of India the question arose with regard to selection of candidates to the post of Judicial Member, Income Tax Appellate Tribunal. The selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at Nos. 1 and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected he has a right to be considered for appointment and at the same time the appointing authority cannot ignore the select panel or decline to make an appointment on its whims. The Court said that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. (emphasis supplied)"

In case the vacancies notified were consumed, then, even in the event of any one of such filled up posts falling vacant on account of resignation or other fortuitous circumstances, it has been held that such vacancies cannot be filled up from the waiting list. The Apex Court in the case of State of Punjab vs Raghbir Chand Sharma (2002) 1 SCC 113 has held as under:-

With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

8. With the above provisions, we have to deal with this case. Clause 14 of the Annexure A-1 Notification inviting applications states that prior to the appointment as TTA, the candidates would have to attend and successfully complete the training organized by the B.S.N.L., and during that period, they would be entitled to stipend. Their seniority would be based on the merit position obtained in the training.

9. In their communication to the aforesaid Lalit Kumar, the respondents



have stated that after successful completion of the above mentioned course, the(n) you will be appointed by GMTD, Sirohi, after ensuring the receipt of police verification report (PVR)....”

10. In their communication dated 30-07-2009, the respondents have clearly stated that the applicant has been kept in waiting list and in the event of any one of the selected candidates sent for training withdrawing from the training, then the applicant would be considered for appointment.

11. All the above would go to prove that when Lalit Kumar had left the Training course he was only a TTA Trainee and not a TTA. He would have crystallized his appointment as TTA only on completion of full ten weeks' training course and after successful completion of the training. And his seniority would be based on the merit position in the Training. In view of the fact that the said Lalit Kumar had not completed the Training, he cannot be said to have been appointed to the SC reserved post of TTA. Thus, the said vacancy cannot be said to have been consumed or utilized, to make the wait list to be ceased to exist. The wait list is thus alive and since the applicant is first in the waiting list and since he had already furnished necessary bond, he has to be imparted the training and on successful completion of the same he would be appointed to the post of TTA. The decisions cited by the counsel for the applicant do not apply to the facts of this case, as the vacancy in question is not one that had arisen subsequently.

12. Respondents' counsel argued that the training period of ten weeks has already been over. Be that as it may, the applicant could well be accommodated in the next available training and he would be subject to successful completion of the training he would be treated as if he had undergone the training in the 2009

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batch itself and his seniority would be above the subsequent batch.

13. Thus, the OA fully succeeds. It is declared that the applicant is entitled to be sent for training and followed by appointment to the post of TTA. Respondents are directed to act accordingly. If in the near future, there is no scheduled training, then the applicant be imparted training as a special case.

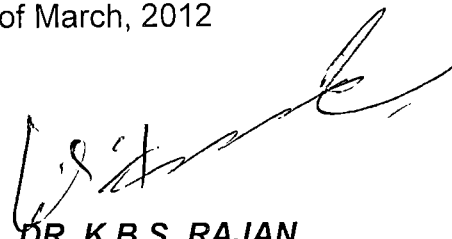
14. This order shall be complied with, within a period of four months from the date of receipt of certified copy of this order.

15. No costs.

Dated this the 9th day of March, 2012



SUDHIR KUMAR
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

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