

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 465 of 2009

Wednesday, this the 28th day of October, 2009

CORAM:

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

Hon'ble Mr. K. George Joseph, Administrative Member

Amal. M., S/o. Mariyappan, aged 25 years, "Souparnika", Cherukara Post, Kavalam, Alappuzha District, Pin-688 506. **Applicant**

(By Advocate – Mr. V.V. Suresh)

V e r s u s

1. **The General Manager Telecom District, BSNL, Pitchu Iyer Junction, Mullackal, Alappuzha-688 011.**
2. **The Chief General Manager, BSNL, O/o. The Chief General Manager, BSNL Kerala Circle, Trivandrum.**
3. **Union of India, Represented by the Secretary to Government of India, Ministry of Communications, New Delhi.** **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 28.10.2009, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The matter is simple. The respondents have notified ten vacancies of Telecom Technical Assistants of which six belong to general category, three to backward class and one to scheduled caste. Annexure A-1 with reference to Alleppey refers. The applicant the general candidate, was the sixth person in the order of merit. When selection was made, further, the respondents modified the extend of reservation by adding one post of Ex-Serviceman

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and correspondingly reducing one from the general category. The said resulted in the applicant's name being kept under the waiting list. The other selected candidates including one Ex-Serviceman are stated to have sent for training though due to pendency of this OA appointment of the Ex-Serviceman has not been made. The applicant challenges the decision to apportion one vacancy to Ex-Serviceman from out of general quota.

2. The respondents have contested the OA. According to them the BSNL had clearly exhibited that it reserves the right to amend any clause in the notification in future according to the rules and regulations prevailing at that time. It has also been stated that reservation as per Central Government guidelines will be applicable for SC/ST/OBC/Physically Handicapped/Ex-Servicemen. As 10% of the vacancies has to be apportioned for Ex-Servicemen which was omitted, the same has been included and accordingly, the number of posts to be filled by general candidates has been reduced to five.

3. Counsel for the applicant argued that vide Annexure R-1(c) all the information should be made available in the notification and as such the respondents should not have altered the number of vacancies for general candidates.

4. Counsel for the respondents submitted that the statutory requirement of 10% reservation of Ex-Servicemen cannot be ignored and as such the respondents have reduced the number of posts for general candidates.

5. Arguments were heard and documents perused. Provisions for reservation for Ex-Servicemen are contained in the rules called Ex-Servicemen (Re-Employment in Central Civil Services and Posts) Rules, 1979. It was promulgated on 15th December, 1979. It stipulates vide rule 4 thereof that 10% of vacancies in each of the categories of Group-C post shall be reserved for being filled by Ex-Servicemen. Rule 4(3) stipulates that no vacancy reserved for Ex-Servicemen in a post to be filled in otherwise than on the results of an open competitive examination shall be filled by the general candidates until and unless the authority has obtained non-availability certificate from the Employment Exchange, DG Resettlement as well as approval by the Central Government. The above provision being statutory in character rectification of mistake in the notification before selection is made as carried out by the respondents cannot be faulted with. In addition the applicant has been kept in the waiting list only and as per the Constitution Bench judgment in Shankarsan Dash Vs. Union of India - 1991 (3) SCC 47, even candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists. In the instant case no vacancy is available and the applicant was kept only in the waiting list. As such by the action of the respondents no vested right of the applicant has been impaired. Hence, the OA fails and is accordingly dismissed. No costs.


 (K. GEORGE JOSEPH)
 ADMINISTRATIVE MEMBER

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 (K.B.S. RAJAN)
 JUDICIAL MEMBER