

**O.A No. 557 /2010**

**CORAM**

R. Anilkumar,  
Junior Sports Assistant,  
O/o the Chief General Manager,  
Kerala Circle, BSNL, Trivandrum. - Applicant

**y.**

1. Union of India represented by the Secretary, Department of Telecommunications, Ministry of Communications, Sanchar Bhavan, New Delhi.
2. The Chairman Cum Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhavan, New Delhi.
3. The Chief General Manager, Telecom, BSNL, Kerala Circle, Trivandrum.

(By Advocate Mr TC Krishna for R.2 & 3)

## ORDER

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The only legal question involved in this case is when and how should the provisions of para 4 of the Career Progression Policy for Sports Persons (vide Annexure A-12) be pressed into service. The said provision reads as

under:-


"4.1 If they are educationally age & service wise eligible, the above said sports persons shall be treated at par with other staff in that particular scale for the purpose of eligibility to appear in L.I.C.E Examinations, for any post based promotions.

4.2 These Sports persons shall also be eligible for promotion under any non-executive time bound promotion policies of the organisation made applicable since 1.1.2007. Since the deliberations are still going on in the matter, consequent to declaration of the promotion policy at a later date the provisions of the instant scheme shall be reviewed, if required."

2. Now, a thumb nail sketch of the facts of the case: The applicant, a first class Graduate in the faculty of Mathematics from Kerala University with a further credit of holding a Three year Diploma with first class in Electrical Engineering, was selected as Group D under Sports quota and was appointed as such on 05-11-2003, vide Annexure A-1. On successful completion of probation, he was also confirmed in the said cadre w.e.f. 05-11-2005, vide Annexure A-2 and was later on, by Annexure A-3 re-designated as Junior Sports Assistant.

3. Under the extant rules, in respect of Telecom Technical Assistant (TTA for short), the posts are filled up inter alia by promotion, through Limited Departmental Competitive Examination from among employees of certain specified Group C posts of the Telecom Engineering, holding 10 + 2 standard certificate or equivalent. Annexure A-6 refers.

4. The applicant was an aspirant to reach the above level of TTA through participating in the limited Departmental Competitive Examination for which purpose, he had addressed Annexure A-9 representation dated 08-06-2009 the Director(HRD), of the Respondents' Organization. As there was initially no response, the applicant approached the Tribunal in OA No. 588 of 2009 for a direction to the respondents to consider and decide the same and by the time



the case came up for hearing, the respondents having rejected the request of the applicant through the impugned Annexure A-10 order dated 08-09-2009, the said OA had been rendered infructuous, vide Order dated 05-02-2010 at Annexure A-11. In addition to the aforesaid Annexure A-10, vide Annexure A-7 order dated 24-11-2009, the respondents have rejected the case stating that the applicant does not fulfill the requisite conditions as per the Recruitment Rules. The applicant has now challenged the said impugned Annexure A-10 order dated 08-09-2009 inter alia on the ground that the rejection of the applicant's request is against the provisions of the above extracted para 4.1 of the Career Progression Policy for Sports Persons. The reliefs sought are as under:-

- (i) To call for the records relating to Annexure A-1 to Annexure A-12 and quash Annexure A-7 and Annexure A-10.
- (ii) To direct the respondents to consider the applicant for promotion as Telecom Technical Assistant against the 50% quota if necessary by amending the Annexure A-6 Recruitment Rules.
- (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

5. While Respondent No. 1 filed a short reply stating that no relief has been claimed by the applicant against the said Respondent, other respondents (2 and 3) have contested the OA. Apart from the customary and conventional technical objections contending, vide para 4 of the counter, that the applicant has no legal and existing rights and reliefs sought for are not sustainable and also contending vide para 11 thereof that the Tribunal's powers are not that much extended to encroach into the domain of the competent authority, which encompasses the matter of conducting of departmental examination, justified their decision of rejecting the request of the applicant. To buttress their contention, a few

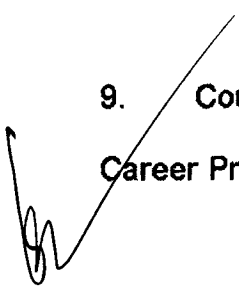
decisions (in OA No. 644 of 009 of this Tribunal as also decision of the A.P. High Court in W.P. No. 6357 of 2006 dated 03-09-2007) have been cited.

6. In his rejoinder, the applicant termed the rejection order (Annexure A-10) as one having been passed without due application of mind, as the same had not taken into account the provisions of para 4.1 of Annexure A-12. Rest of the contentions of the respondents have also been branded as "totally devoid of any merit and substance"

7. In their additional reply, respondents 2 and 3, the respondents have reproduced an extract of the Recruitment rules to state that the applicant does not fulfill the requisite conditions thereof and hence, Annexure A-10 order was passed.

8. Counsel for the applicant argued that when certain policy decisions for career prospects have been consciously taken by the respondents, they are to be duly respected and pressed into service and para 4.1 of the Career Progression Policy for Sports persons clearly provides for eligibility of the applicant to participate in the Limited Departmental Competitive Examination. The counsel argued that the respondents have clean forgotten about the existence of such provision and referring only to the provisions of the Recruitment Rules, they have contended that the applicant did not fulfill the requisite conditions for participating in the Limited Departmental Competitive Examination. Thus, their approach is totally pedantic.

9. Counsel for the respondents did not dispute about the existence of the Career Progression Policy for Sports persons.



10. Arguments were heard and documents perused. The Recruitment Rules for the post of TTA vide Annexure R-1(a) have been framed by the B.S.N.L. in 2001. The Career Progression Policy for sports persons came into existence in the wake of a decision taken by the BSNL Sports and Cultural Board held on 5<sup>th</sup> July, 2007, vide Annexure A-12 dated 1<sup>st</sup> May 2008. Obviously, the provisions available in the said policy cannot, unless the Recruitment Rules are suitably amended, ~~cannot~~ figure in the Recruitment Rules framed much earlier. Para 4.1 of the Policy certifies that subject to fulfillment of the educational and age requirements, the sports persons shall be treated at par with other staff in that particular scale for the purpose of eligibility to appear in the LDCE Examinations, for any post based promotions. The import of the same is as under:-

(a) The sports person should possess the essential qualifications and age and service as provided for in the recruitment Rules.

(b) Such sports persons shall be treated **at par with other staff in that particular scale** for the purpose of eligibility to appear in the L.D.C.E. Examinations.

11. Thus, what is to be seen is whether the applicant fulfills the qualifications and experience and whether he is in the comparable pay scale of those who are eligible for appearing in the LDCE as per recruitment rules.

12. The applicant is now functioning as Junior Sports Assistant, which carries a pay scale of Rs 4000 – 120 – 5800 (proposed being Rs 4720 – 150 – 6970). Though the applicant fulfills the qualification part of the eligibility condition, if the above pay scale is comparable to that of Telecom Operating Assistants or Telecom Mechanics who are inter alia eligible to participate in the LDCE, then

there is no <sup>doubt about</sup> ~~question questioning~~ his eligibility. For, the requirement of 5 years experience is also fulfilled as the applicant had been holding the post since 2003. Instead, if the post held by the applicant carries a pay scale less than that of the aforesaid posts, then the applicant cannot be made eligible.

13. The Scheme provides for first and subsequent Progressions, vide para 3.2 to 3.6 of the Scheme. The first progression shall be effective from the date of approval of the scheme. It is not clear from the pleadings whether the respondents have approved the scheme and if so when, and whether the applicant is afforded such a progression. In the event of such first progression, the applicant would have been brought to the higher pay scale as for TOA (G) and the benefits available for participating in the LDCE to those placed in such a pay scale would be available to the applicant.

14. If the Rules are not suitably amended incorporating the provisions of para 4 of the Career Progression Policy for Sports Persons, the said provisions would be rendered otiose, as normally, the eligibility conditions are verified only from the point of view of the Recruitment Rules.

15. In the instant case, the Competitive Examination in question having already been conducted, Annexure A-7 and A-10 have been rendered infructuous. Thus, the only relief to be considered is amendment to the Rules to enable the respondents to consider the case of the applicant (and similarly situated sports persons) for promotion as Telecom Technical Assistant against the 40% quota.

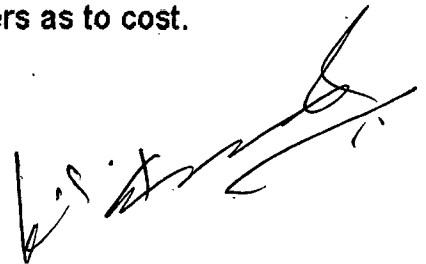
16. Thus, the OA is disposed of with a direction to the respondents to make suitable amendments to the Recruitment Rules for the post of Telecom

Technical Assistant (or for that matter any other posts where the element of LDCE is available) incorporating the provisions of Para 4.1 (and other provisions where necessary) of the Career Progression Policy for Sports Persons. Attempt should be made to effect the amendment before the date of next such LDCE or else, pending the amendment, for the next LDCE, the provisions of the said Career Progression Policy for sports persons be kept in view and the eligible sports persons allowed to participate in the LDCE.

17. Under the circumstances, there shall be no orders as to cost.



**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**



**Dr K.B.S.RAJAN**  
**JUDICIAL MEMBER**

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