

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW**

ORDER RESERVED ON : 10.04.2017

ORDER PRONOUNCED ON: 13/04/2017

**Present : Hon'ble Mr. Justice V.C. Gupta, Judicial Member,
Hon'ble Mrs. P. Gopinath, Administrative Member.**

O.A. No. 246/2010

Dilip Kumar Yadav aged about 36 years son of Sri Bachhraj Yadav resident of Mataideeh, Nai Bazar Tulsipur, District – Balrampur presently posted as Junior Telecom Officer (Civil), B.S.N.L., Civil Sub Division, Gonda.

..... Applicant

Versus

1. Bharat Sanchar Nigam Ltd. through its Chairman-cum-Managing Director, Sanchar Bhawan, 4th Floor, New Delhi – 110001.
2. General Manager, (Departmental Examination) Bharat Sanchar Nigam Limited, 222, Eastern Court, Janpath, New Delhi – 110001.
3. Assitant General Manager (Departmental Examination) Bharat Sanchar Nigam Limited, 222, Eastern Court, Janpath, New Delhi – 110001.
4. Director (Human Resources Development) Bharat Sanchar Nigam Limited, Corporate Office HQ. 4th Floor, New Delhi-110001.
5. Director (Building Works) Bharat Sanchar Nigam Limited, 222, Eastern Court, Janpath, New Delhi – 110001.
6. Chief General Manager, U.P. Eastern Circle, Bharat Sanchar Nigam Limited, C.P.M.G. Compound, Lucknow.
7. Chief Engineer (Civil), Bharat Sanchar Nigam Limited, U.P. East, Civil Zone, Lucknow.

..... Respondents.

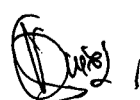
For the Applicants : Mr P.K. Singh, Counsel

For the Respondents : Mr G.S. Sikarwar, Counsel.

ORDER

DELIVERED BY JUSTICE V.C. GUPTA, JM

By means of this Original Application, the applicant has sought following relief(s):



- "A- The Hon'ble Tribunal may kindly be pleased to set aside the result of Limited Departmental Competitive Examination for promotion on the post of Sub Divisional Engineer (Civil) declared vide order dated 08.07.2009 (Annexure No. 1) further modified vide corrigendum dated 10.07.2009 (Annexure No.2).
- B- The Hon'ble Tribunal may kindly be please to issue direction to the opposite parties No. 2 & 3 to reevaluate the answer sheet and give full marks for question attempted by the applicant in first and second papers and also give the full marks of the question which needs steel table for solving the second paper of the Limited Departmental Competitive Examination held on 10.08.2008 and accordingly prepare the results for promotion on the post of Sub Divisional Engineer (Civil).
- C- The Hon'ble Tribunal may also graciously be pleased to issue appropriate directions to the opposite parties No. 2 and 3 to exclude the candidature of candidates from the State of Jammu & Kashmir for the purpose of preparing the combined merit list of all the candidates as separate examination on different date were held for he candidates of State of Jammu & Kashmir for promotion on the post of Sub Divisional Engineer (Civil) on the basis of Limited Departmental Competitive Examination held on 10.08.208.
- D- Any such other order or direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case.
- E- Allow this Original Application with cost."

2. The brief facts giving rise to this petition are that the applicant appeared in Limited Departmental Competitive Examination for promotion from Junior Telecom Officer (Civil) to the post of Sub Divisional Engineer (Civil) held in accordance with the recruitment rules known as Sub Divisional Engineer (Civil) Recruitment Rules-2002. Applicant being eligible candidate appeared in the examination but could not succeed and he did not find a place in the final panel dated 8.7.2009 and corrigendum dated 10.07.2009 where 62 person were empanelled. The panel was implemented.

3. The applicant thereafter raised objection by moving a representation to the opposite parties pointing out various anomalies in conducting the examination and evaluation of the answer book. The applicant pleaded that the answer book was not properly evaluated. He made representation on 12.11.2009 and then 20.02.2010. When his grievances was not redressed the applicant and some other filed an original application no. 79/2010 (Bhanu Pratap Singh and others Vs. U.O.I. and others) but the same was dismissed as withdrawn with liberty to file a fresh petition. Thereafter, applicant filed the present original application.

4. Counter affidavit has been filed by the respondents and contended that this OA is misconceived. The steel table were provided on demand to all the candidates. However no commitment was made with any examinee that full marks shall be given for the question related to steel table in case steel table are not provided. The applicant did not support his objection with regard to answer of question with any

Quoted

authenticated decision or book. If there was any discrepancy he must have applied forthwith after examination is over and not to wait till the result is declared. The applicant when he did not see his name in the selection list starts levying frivolous allegations which could not be taken into consideration. It was also contended that petition is bad for non-joinder of the necessary parties because the selected candidates have not been impleaded and is similar circumstances in OA No. 244/2010 Krishna Kumar Vs. BSNL & Others decided on 09.09.2014, the petition was dismissed on the grounds of non-joinder of the necessary parties. OA No. 244/2010 was also relates to the same examination. The relevant portion of the judgment in para 2 & 3 is extracted herein below:

"2. Before going to the facts of the case and merits of the case, it is seen that the applicant has prayed for quashing of the order dated 08.07.2009 and corrigendum dated 10.07.2009 by which 61+1 persons have been declared as successful in the Limited Departmental Competitive Examination some of whom in the absence of any interim order may have been promoted to the cadre of SDE (Civil). The applicant has not arrayed them as respondents in this O.A. The Hon'ble Supreme Court in the case Vijay Kumar Kaul and others Vs. Union of India and others [Civil Appeal No. 4986-4989 of 2007] held as follows:-

29. In Public Service Commission, Uttaranchal v. Mamta Bisht & Ors. 9 this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: - "7. In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr., AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that nonjoinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat; AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas 8 AIR 2006 SC 2432 9 AIR 2010 SC 2613 Page 21 21 Barat & Ors., AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88). 8. In Prabodh Verma & Ors. v. State of U.P. & Ors. AIR 1985 SC 167; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

30. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.



31. Analysed on the aforesaid premised reasons, we do not see any merit in these appeals and, accordingly, they are dismissed with no order as to costs.

3. In view of the above, the O.A. is dismissed on the ground of non-joinder of necessary parties. However, the applicant is given liberty to agitate the matter afresh. If so advised. No order as to costs."

5. We have considered the submissions made by counsel for the parties and perused the records.

6. It is not in dispute that applicant has not impleaded the selected candidate and those who had been appointed in pursuance of the selection. The relief claimed by the applicant is to set aside the panel prepared on 08.07.2009 with corrigendum dated 10.07.2009.

7. As held by this Tribunal in an earlier decision in the original application no. 244/2010 that behind the back of selected candidate and those who had already joined, the panel cannot be allowed to be challenged by the applicant.

8. In this case the applicant has challenged the process of selection after declaring him unsuccessful. On account of this, the original application cannot be allowed and is liable to be rejected.


9. In another case **Poonam vs. State of UP 2016 (2) SCC 779** the Hon'ble Supreme Court reiterated the principle of natural justice and observed that no order could be passed behind the back of a person going to be affected adversely by such order. Such person would be a necessary party and must be impleaded on the basis of principle of natural justice before passing any order effecting him.

10. Admittedly, the principle of natural justice has not been adhered to in this original application. Hence, on this account the petition is liable to be dismissed.

11. In recent judgment of the Hon'ble Apex Court in **Madras Institute of Development Industries and others Vs. K Subramaniam & others 2006 (1) SCC 452** held that selection process cannot be allowed to be challenged by a candidate who has consciously taken part in the selection process and declared unsuccessful.

12. In view of above facts and circumstances, we are of the view that this petition lacks merit and is accordingly dismissed.


(Mrs. P. Gopinath)
Administrative Member


(Justice V.C. Gupta)
Judicial Member