

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 24<sup>th</sup> day of November, 2009

**TRANSFER APPLICATION NO. 10/2009**  
**IN**  
**(CIVIL WRIT PETITION NO. 5501/2008)**

**CORAM:**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Madhav Pratap Singh son of Shri Lakhan Singh, aged around 31 years, resident of Behind Krishna Nagar Housing Board, Ladha Nayla Road, Bharatpur (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Amit Mathur)

VERSUS

1. Bharat Sanchar Nigam Limited through its CMD, Statement House, New Delhi.
2. Chief General Manager, BSNL, Telecommunication, BSNL Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.

.....RESPONDENTS

(By Advocate : Mr. Neeraj Batra)

**ORDER**

**PER HON'BLE MR. M.L. CHAUHAN**

The applicant has filed Writ Petition before the Hon'ble High Court, which was registered as Writ Petition No. 5501/2008 thereby praying for the following reliefs:-

"(a) That this writ petition may be allowed with costs in favour of the petitioner and thereby direct the respondents to consider candidature of the petitioner for appointment to the post of TTA pursuant to the Advertisement Annexure-3 and in case, petitioner is found suitable, give him appointment on the post of TTA with all consequential benefits.

4.

- (b) That the respondents be further directed to treat the qualification of BE (Information Technology) as sufficient qualification for appointment to the post of JTO/TTA.
- (c) Any other order or direction which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case and in favour of the petitioners, may also be passed."

2. Consequent upon conferment of jurisdiction in this Tribunal in respect of BSNL employees, the matter was transferred to this Tribunal by the Hon'ble High Court vide order dated 25.11.2008.

3. Briefly stated, facts of the case are that respondent no. 1 issued an advertisement (Annexure -3) for direct recruitment for Telecom Technical Assistant (TTA). As can be seen from Annexure -3, the closing date of receipt of application was mentioned as 31.10.2007 and examination was scheduled to be held on 20<sup>th</sup> & 21<sup>st</sup> January, 2008. As can be seen from the advertisement (Annexure - 3), the qualification for the said post of TTA was as follows:-

"Applicant must possess three year Engineering Diploma as on 31.10.2007 in Telecommunications Engg./Electronics Engg./Electrical Engg./Radio Engg./Computer Engg./ Instruments Technology/M. Sc (Electronics) from a recognized institution/University. The candidates having higher qualification like BE or B. Tech. in the respective stream will also be eligible. Only those candidates who have minimum 50% marks will be permitted to appear in the competitive exam.

4. It may be relevant to state here that the applicant posses BE degree in the specialty of Information Technology. Although in terms of the qualification as laid down in the advertisement, the applicant was not eligible, still he applied for the aforesaid post and he was also issued Admit Card (Annexure -4) thereby permitting him to appear in

Paper I to III on the dates mentioned on the Admit Card. It was specifically stipulated in the Admit Card that admission to this examination is 'purely provisional' subject to fulfillment of all eligibility conditions as on 31.10.2007. However, the candidature of the applicant was rejected by the respondents as the applicant was not fulfilling the requisite qualification as laid down in the advertisement. According to the applicant, such a course was not admissible for the respondents as the qualification of BE (Information Technology) has to be treated equivalent to BE (Computer Engineering) as syllabus of both these specialties are almost identical. Further grievance, as raised by the applicant in his petition, is that one Shri Premraj Meena son of Shri Prasadilal Meena having Roll No. 0462 has been selected on the post of TTA in Pune, who was also possessing the same qualification of BE (Information Technology), as such the case of the applicant could not have been treated differently.

5. The respondents have filed reply. In the reply, the respondents have stated that no doubt the applicant was issued Admit Card but Admit Card so issued was purely provisional with condition that "Admission to this examination is purely provisional subject to fulfillment of all eligibility conditions as on 31.10.2007." The respondents have stated that qualification of the petitioner is BE (Information Technology) is not the requisite qualification as notified in the notification issued for the said examination for the cadre of TTA. It is stated that recruitment for the post of TTA do not provide any equivalence with regard to educational qualification whereas in the Recruitment Rules for JTO cadre, equivalence qualification has also

been inserted in the Recruitment Rules. Since there is no equivalence provided in the Recruitment Rules with regard to educational qualification for the post of TTA, the contention of the applicant that BE (Information Technology) is equivalent to computer Engineering and as such he is eligible for the cadre of TTA is without any basis. The respondents have also placed on record the Recruitment & Promotion Rules 2001 for the post of Junior Telecom Officers as well as TTA to show the requirement of educational qualifications for those posts. Thus according to the respondents, the rejection of the candidature of the petitioner for want of requisite qualification is perfectly legal. As regards the contention of the applicant that in other circle, one Shri Prem Singh Meena, who was similarly situated, was given offer of appointment on the post of TTA, the respondents have categorically stated that the matter does not pertain to BSNL, Rajasthan Circle.

6. The applicant has filed rejoinder. Alongwith the rejoinder, the applicant has also annexed document (Annexure -6), which is an advertisement pertaining to the selection held in the year 2005-2006, perusal of which shows that even BSNL Rajasthan Circle has notified vacancies for the year 2005-2006 whereby besides the qualification, as stipulated in the Recruitment & Promotion rules, person possessing equivalent qualification from recognized institution/University were also made eligible for appointment. Thus according to the applicant, the contention of the respondents that persons possessing equivalent engineering degree were not liable to be considered in terms of the Recruitment Rules is without any basis.

7. We have heard the learned counsel for the parties and have gone through the material placed on record. The question which requires our consideration is whether in the facts & circumstances of the case, the applicant has made out a case for grant of relief. As can be seen from the facts as stated above, the respondents took steps for filling up 326 posts of TTA in Rajasthan Telecom Circle by way of direct recruitment and for that purpose, an advertisement was issued and the persons possessing the requisite qualifications were required to apply for the aforesaid posts in the prescribed proforma. The last date of receipt of the application was 31.10.2007. The prescribed qualification has already been reproduced in the earlier part of the judgment. It may be stated that qualification has prescribed in the advertisement is strictly in conformity with the TTA Recruitment & Promotion Rules 2001, which have been placed on record by the respondents with their reply. As can be seen from Page No. 41 in ~~as~~ 8 'Educational & other qualification required for Direct Recruits', it has been stated as three years Engineering Diploma in Telecommunications Engineering/ Electronics Engineering/ Electrical Engineering/ Radio Engineering/ Computer Engineering/ M. Sc. (Electronics) from a recognized institution/ university. Admittedly, a person possessing diploma/degree in Information Technology has not been made eligible for the said post of TTA. Besides it, the word 'Equivalent Engineering Degree' has not been mentioned in the Recruitment Rules, which has been incorporated in the Recruitment Rules 2001 of Junior Telecom Officers, which constitute a different cadre. Thus on the face of this statutory qualification prescribed in ~~as~~ 8 recruitment rules whereby Engineering Diploma in Information &

Technology has not been incorporated as eligible qualification for the purpose of appointment to the post of TTA. Whether it was permissible to the applicant to even apply for the aforesaid post? Our answer to this point is clearly in negative. Simply because the applicant was issued an Admit Card that too provisional will not confer any right upon the applicant to claim relief especially when he does not fulfill requisite qualification meant for the post. The matter on this point is no longer res-integra. The Apex Court in the case of T. Jayakumar vs. A. Gopu and Another, 2008(2) SCC (L&S) 919 has clearly held that even if the applicant appeared in the written examination, he can be excluded at the time of interview/ viva-voce and the principle of estoppel is not attracted.

8. The next question which requires our consideration is whether it is permissible for us to grant relief to the applicant on the ground of discrimination in much as some of persons have been permitted to appear by the Department in the earlier examination held for recruitment to the post of TTA. According to us, Article 14 of the Constitution of India is not attracted because Article 14 of the Constitution is a positive concept; equity cannot be claimed where a person has been illegally appointed. It is a settled position of law that any appointment contrary to the Rule is nullity. Further, it is also a settled position that it is not for the Court to consider relevancy for qualification prescribed for various posts. In case the diploma in Information & Technology is to be treated as equivalent to that of Computer Engineering, it is for the appropriate authority to review the prescribed qualification. Certainly we cannot give direction/

mandamus to the authorities to the effect that the qualification of BE Information & Technology should be treated as equivalent to that of Computer Engineering. This will amount to inserting fresh category in the eligibility condition/ education qualification prescribed in the Recruitment Rules. According to us, this is not permissible for the Court, more particularly, when the applicant has not challenged the validity of the Recruitment & Promotion Rules to the post of TTA as discriminatory & arbitrary whereby category of the applicant has been excluded for the purpose of appointment to the post of TTA. Simply because Rajasthan Circle had issued an advertisement (Annexure -6) in the year 2005 whereby eligibility criteria and qualification has been prescribed dehors the rules and the word 'equivalent from a recognized institution/University' has been incorporated will not advance to cause of the applicant. It is settled position that any qualification prescribed in the advertisement, which is contrary to the Recruitment & Promotion Rules, will not over-ride the rule and creates right in favour of a candidate if otherwise not eligible according to the rules. In any case, we are of the view that the applicant cannot draw any assistance from Annexure -6 in order to show that since the illegality has been perpetuated by the Rajasthan Circle in the year 2005, the same should be perpetuated and the applicant should be granted the benefit based upon the condition incorporated in the advertisement whereby a person possessing equivalent degree in engineering from recognized institution/ University had been made eligible.

9. Learned counsel for the applicant has also produced for our perusal a letter dated 22.08.2008, perusal of which reveals that Management Committee of BSNL has now approved to incorporate "3 years Engineering Diploma in IT" as one of the educational qualification prescribed in Column 8 and Para A (ii) under Column 12 of the Schedule of Recruitment Rules of TTA 2001. It is further mentioned in the said letter that Recruitment Rules of TTA 2001 issued on 27.07.2001 will stand amended to the above extent. Admittedly, this amendment is prospective in nature. Simply because now a person possessing three years' diploma in Information & Technology has been made eligible by the Department for appointment to the post TTA cannot improve the case of the applicant as eligibility has to be seen at the relevant date. The relevant date in the instant case, as can be seen from Annexure -3, was 31.10.2007. Admittedly, on that date a person possessing three years diploma in Information & Technology was not eligible for appointment to the post of TTA. Since, the applicant was not eligible for recruitment at the relevant time as per condition stipulated in the Recruitment & Promotion rules for the post of TTA, no relief can be granted to the applicant simply because illegality has been committed by the Rajasthan Circle and some other circles in the past. The Apex Court in the case of Punjab National Bank by Chairman & Another vs. Astamija Dash & Another, 2009 SLJ 129, in Para nos. 49 to 51 has made the following observations:-

"49. We are not unmindful that as a positive concept, Article 14 would not apply in illegality.

50. In Nagar Mahapalika, Kanpur v. Smt. Vibha Shukla and Ors., 2007(8) SCALE 361, the Court on the issue of regularization of services opined:

"Equality is a positive concept. Therefore, it cannot be invoked where any illegality has been committed or where no legal right is established."

51. Similar opinion was expressed in State of Orissa and Ors. V. Prasana Kumar Sahoo, 2007(6) SCALE 236 at paragraphs 23 and 24 and in Vice Chancellor, M.D. University, Rohtak v. Jahan Singh, 2007 (4) SCALE 226 at paragraph 28."

10. For the foregoing reasons, we are of the view that the present TA is bereft of merit and is accordingly dismissed with no order as to costs.

  
(B.L. KHATRI)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

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