

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 29.01.2013

OA No. 241/2009 with MA No. 425/2012

Mr. V.K. Mathur, counsel for applicant.
Mr. N.C. Goyal, counsel for respondent nos. 1 & 2.
Ms. Seema Gupta, private respondent no. 3 present in person.

Arguments Heard.

Order is reserved.

Learned counsel appearing for the official respondent nos. 1 & 2 is directed to produce the original record with regard to the result in question for perusal of this Tribunal, within a period of three days from today.

Certified copy of this order be made available to the learned counsel appearing for the official respondent nos. 1 & 2.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

11/02/2013

Order pronounced in the
Open Court today.

12/01/13
11/02/13
C.O.

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29/01/13
AD (Legal-II)
BSNL

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

this the ~~11th~~ day of February, 2013

ORIGINAL APPLICATION No.241/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Ganesh Narain Saini
s/o Late Shri Baldev Mali,
aged about 49 years,
r/o House No.1262, Acharyaon Ka Rasta,
Kishanpole Bazar, Jaipur,
Presently working as Junior Hindi Translator
Under the Office of Chief General Manager
(Telecom), Rajasthan Circle,
Bharat Sanchar Nigam Limited,
Jaipur

.. Applicant

(By Advocate : Shri V.K.Mathur)

Versus

1. Bharat Sanchar Nigam Limited
Through Chairman and Managing Director,
Bharat Sanchar Bhawan,
IV Floor, Harish Chandra Mathur Lane,
Janpath, New Delhi.
2. The Chief General Manager (Telecom),
Bharat Sanchar Nigam Limited (BSNL),
Rajasthan Circle, Sardar Patel Marg,
C-Scheme, Jaipur

3. Smt. Seema Gupta,
Rajbhasha Adhikari,
C/o office of the PGMTD,
Jaipur

.....Respondents

By Advocate : Shri N.C.Goyal, for resp. No. 1 & 2
Resp. no. 3 present in person

ORDER (ORAL)

This OA is directed against the action of the respondents by not considering 8 vacancies of Rajbhasha Adhikari already sanctioned by the Head Office of BSNL, New Delhi vide letter dated 5.3.2008 in the Limited Internal Competitive Examination (LICE) conducted on 29.3.2008 for promotion to the post of Rajbhasha Adhikari in BSNL, Rajasthan Circle.

2. The main grievance of the applicant is that instead of 6 posts, 8 posts of Rajbhasha Adhikari were sanctioned and accordingly selection ought to be made for all the 8 vacancies, but the Rajasthan Circle did not follow the directions of the Head Office without assigning any reason. Therefore, the applicant has preferred this OA against the result of the Limited Internal Competitive Examination for promotion to the post of Rajbhasha Adhikari (AD-OL) in BSNL, Rajasthan Circle declared on 2.7.2008 by which 6 persons were selected vide Ann.A/2.



3. To substantiate his case, the learned counsel appearing for the applicant submitted that vide notification dated 14.6.2007 it was decided to conduct the LICE for promotion to the post of Rajbhasha Adhikari (AD-OL) in BSNL, Rajasthan Circle and in the aforesaid notification the examination was scheduled to be held on 22.9.2007.

4. According to the notification, the said examination was to be conducted for the recruitment year 2005 and the cut off date for deciding eligibility of the candidates for appearing in the examination was 1.7.2005 with an experience of 5 years regular service including service rendered as Hindi Translator Gr.II and Gr.III.

5. Before holding the said examination the Assistant Director (Pers.II), Head Quarter, New Delhi vide its letter dated 3.10.2007 informed a partial modification of the BSNL letter dated 13.9.2005 and all the Heads of Telecom Circles were directed to conduct LICE for filling up the vacancies against all the available posts of Rajbhasha Adhikari as on 31.3.2005 but the examination could not be held on the stipulated date. After about 2 years of the said notification, the office concerned issue another office order



dated 12.7.2007 by which it was intimated that the cut off date for deciding eligibility of the candidates appearing in the aforesaid examination will be 29.7.2007 instead of 1.7.2005 as notified earlier.

6. The applicant being eligible, his name was also included in the list of 12 candidates which was issued by the BSNL for the aforesaid examination held on 29.3.2008. Name of the applicant has been shown at Sl.No.11 in the list of eligible candidates and he appeared in the examination held on 29.3.2008. The result of the said examination was declared on 2.7.2008 and list of 6 selected candidates was issued, but in this list name of the applicant does not find mention. It is not disputed that 6 candidates who were promoted to the post of Rajbhasha Adhikari were given posting vide order dated 20.10.2008.

7. The applicant has challenged the action of the respondents on the ground that the respondents have seriously erred in not considering 9 posts. To substantiate his submissions, the learned counsel appearing for the applicant referred to the information applied under RTI Act and furnished by the respondents in which the respondents have clearly mentioned 9 vacancies, which document has been placed by the applicant on record. Further



in the information sought under the RTI with regard to merit position, name of the applicant appears at Sl.No.8 and not at Sl.No.11 as alleged by the respondents.

8. It is also stated by the learned counsel appearing for the applicant that out of 6 selected candidates, two candidates namely Shri Dolat Ram and Smt. Seema Gupta did not complete 5 years experience on the date of determination of vacancies in the year 2005. To this effect also, the applicant represented before the respondents on 29.8.2008 and 21.8.2009 and the Employee Union also represented through letter dated 23.9.2008 and 8.10.2008 but the same were not considered. However, after verifying the fact, the respondents have deleted name of Shri Dolat Ram as he did not possess 5 years' requisite experience in the Rajasthan Circle. Had the respondents deleted names of ineligible candidates, applicant's names would have been considered for the post of Rajbhasha Adhikari as his name figures at Sl.No.8, but the respondents have wrongly considered name of respondent No.3, Smt. Seema Gupta who also did not possess requisite 5 years experience on the cut off date. So far as respondent No.3 is concerned, it is alleged that time and again the date of examination was extended just to accommodate respondent No.3. The letter written by respondent No.3



(Ann.A/32) to grant of relaxation itself show that she did not acquire the requisite qualification on the cut off date, but to accommodate her, the date of examination was extended, as there is no provision of relaxation. It is also submitted on behalf of the applicant that examination was to be conducted for the recruitment year 2005 and cut off date for deciding eligibility of candidates to appear in the examination was 1.7.2005 so far experience for appearing in the examination is concerned.

9. It is also submitted that the rules prevalent at that time were applicable and the selection has to be made as per the existing rules and not as per the amended rules as amended rules have to be given prospective effect.

10. Further submitted that it is evident by Ann.A/6 that one post of Rajbhasha Adhikari is created in Udaipur Telecom District vide order dated 23.8.2004 i.e. prior to the notification issued for LICE and admittedly, this post has not been considered by the respondents. If while conducting the examination, this post would have been considered, the applicant would have been given promotion on the post of Rajbhasha Adhikari.



11. We have heard the learned counsel for the respective parties and carefully perused the material available on record. After having considered the rival submission of the respective parties, it is crystal clear that at the time of conducting LICE there were more than 6 vacancies available, as is evident from the information furnished under the RTI Act and further admitted position is that vide Ann.A/6 letter dated 23.8.2004 one post has been created in Udaipur Telecom District on 23.8.2004 which is not included.

12. Further, on the basis of documents placed on record, it is evident that as per BSNL Corporate Office, New Delhi letter dated 5.3.2008, the circle wise sanctioned strength of Rajbhasha Adhikari was 8 posts and in the information provided under the RTI, the respondents themselves admitted that as on 29.3.2008, there were 9 posts of Rajbhasha Adhikari available in Rajasthan Circle. In these circumstances, the stand taken by the respondents that there were 6 posts of Rajbhasha Adhikari available cannot be established. The respondents have placed a letter dated 13.11.2007 showing that the post of Rajbhasha Adhikari at GMTD, Udaipur was abolished, but on the contrary, they have admitted in the information under RTI that 9 posts were available on



29.3.2008. In these circumstances, the selection ought to be held for all sanctioned posts.

13. Further, the respondent No.3 who was admittedly not having requisite experience as per the prevalent rules was considered and given promotion and posting.

14. In view of above discussions, in the interest of justice, we deem it proper to direct the respondents to reconsider case of the applicant for promotion to the post of Rajbhasha Adhikari against the post available with them notionally w.e.f. the date the same was given to Smt. Seema Gupta, who was junior to the applicant and shall pass order in this regard.

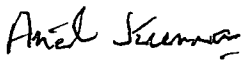
15. It is further directed to do the needful in this regard expeditiously but in any case not beyond the period of two months from the date of receipt of a copy of this order.

16. If any prejudicial order against the interest of the applicant is passed, the applicant is at liberty to challenge the same and the selection in question by way filing substantive OA.

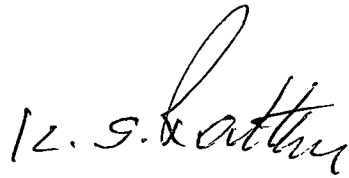


17. With these observations, the OA stands disposed of with no order as to costs.

18. In view of order passed in OA, no order is required to be passed in MA No.425/2012, which shall stand disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/