

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 07.09.2012

OA No. 262/2009 with MA No. 181/2009

Mr. Mahendra Shah, counsel for applicant.
Mr. T.P. Sharma, counsel for respondents.

Heard.

O.A. and M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

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

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 262/2009
with
MISC. APPLICATION NO. 181/2009

DATE OF ORDER: 07.09.2012

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

J.P. Kalra S/o Shri M.G. Kalra, R/o 48, Bank Colony, Jaipur.

...Applicant

Mr. Mahendra Shah, counsel for applicant.

VERSUS

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecommunication-cum-BSNL, Rajasthan Telecom Circle, Jaipur.
3. Shri R.S. Rajpoot, D.E. (08), Office of GMTD, Hiran Mangri, Udaipur.

... Respondents

Mr. T.P. Sharma, counsel for respondents.

ORDER (ORAL)

The present Original Application has been preferred by the applicant praying for the following relief: -

- "i). the impugned order dated 24.4.2003 may kindly be declared illegal and invalid as well as the action of the respondents in not treating the applicant senior than the referred persons in the impugned order dated 24.4.2003 be also declared illegal and the respondents be directed to assign the seniority on the basis of year of recruitment ignoring the year of passing of departmental competitive examination for the purpose of eligibility list for promotion to the post of TES Gr. B under 75% promotion quota for which criteria is seniority cum fitness with all consequential benefits and the suitable orders or directions may kindly be passed for the mentioned prayer in favour of the applicant.



- ii) any other relief which this Hon'ble tribunal deem fit and proper in the facts and circumstances of this case may also be passed in favour of the applicant."

2. Learned counsel appearing for the applicant placed reliance upon the letter bearing No. 15-10/2007 Pers-II (DPC), dated 19th February, 2009 issued by the Bharat Sanchar Nigam Limited, New Delhi, copy of which is taken on record of the O.A.

3. Learned counsel appearing for the applicant submits that vide letter dated 19th February, 2009, BSNL, New Delhi, certain clarification regarding fixation of seniority of TES Grade 'B' equivalent to SDE (T) has been issued. Having considered the judgment dated 13.02.1997, reported in (1997) 10 SCC 226, in C.A. No. 4339/1995, the Hon'ble Supreme Court has directed for preparation of eligibility list of the candidates according to the year of recruitment/appointment and not according to the year of passing the examination nor with reference to the year of confirmation.

Further, in judgment dated 26.04.2000, reported in (2000) 9 SCC 71, the Hon'ble Supreme Court has held that the Departmental Promotion Committee is duty-bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the amendment to the Rules made on 04.02.1987, the criterion for selection is seniority cum fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on 28.06.1966, the Departmental Promotion Committee has to prepare separate lists for each year of



recruitment in the feeder cadre. In this view of the matter, the judgment of Supreme Court in Civil Appeal No. 4339/1995, reported in (1997) 10 SCC 226, has rightly been decided in interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the memorandum dated 28.06.1966.

4. Learned counsel appearing for the applicant prays that the applicant may be given liberty to file fresh representation before the competent authority in view of the clarification given by the BSNL, New Delhi, vide letter dated 19th February, 2009 (supra) and the respondents may be directed to consider and decide the same in the light of the clarification given in the letter dated 19th February, 2009.

5. In view of the request made on behalf of the applicant, liberty is given to the applicant to file fresh representation before the respondents pursuant to the clarification issued by the BSNL, New Delhi vide letter dated 19th February, 2009. Accordingly, the respondents are directed to consider the representation of the applicant, if he so files, in accordance with the provision of law as well as in view of the letter dated 19th February, 2009 issued by the BSNL, New Delhi, and pass a reasoned and speaking order expeditiously but in any case not later than a period of three months from the date of receipt of a copy of this order.


6. However, if any prejudicial order against the interest of the applicant is passed by the respondents, the applicant will be at

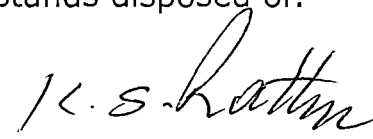


liberty to challenge the same by way of filing the substantive Original Application.

7. With these observations and directions, the Original Application stands disposed of with no order as to costs.

8. In view of the order passed in Original Application, no order is required to be passed in Misc. Application for seeking condonation of delay in filing the Original Application. Accordingly, the Misc. Application also stands disposed of.


(ANIL KUMAR)
MEMBER (A)


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

kumawat