

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>10.08.2009</u></p> <p><u>OA No. 337/2009</u></p> <p>Mr. S. K. Singh, Counsel for applicant.</p> <p>On the request of the learned counsel for the applicant, let the matter be listed for hearing on 19.08.2009.</p> <p><i>B.L. KHATRI</i> (B.L. KHATRI) MEMBER (A)</p> <p><i>M.L. CHAUHAN</i> (M.L. CHAUHAN) MEMBER (J)</p> <p>AHQ</p>
	<p><u>19.08.2009</u></p> <p><u>OA No. 337/2009</u></p> <p>Mr. S.K. Singh, Counsel for applicant.</p> <p>Heard learned counsel for the applicant.</p> <p>For the reasons dictated separately, the OA is disposed of.</p> <p><i>B.L. KHATRI</i> (B.L. KHATRI) MEMBER (A)</p> <p><i>M.L. CHAUHAN</i> (M.L. CHAUHAN) MEMBER (J)</p> <p>AHQ</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 19th August, 2009

ORIGINAL APPLICATION NO. 337/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Vijay Kumar Sharma son of Shri Mangal Sen, aged about 53 years, resident of Plot No. 9, Sahyog Nagar, Bharatpur, working as Sub Divisional Engineer (Elec.) BSNL, Electrical Sub Division, Bharatpur.

.....APPLICANT

(By Advocate: Mr. S.K. Singh)

VERSUS

1. Union of India through Chairman cum Managing Director, (BSN L), 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. PGM (Electrical), BSNL, Corporate Office, Chandraloke Building, 10th Floor, Janpath, New Delhi.
3. Dy. Director General (Personnel), BSNL, Head Quarter, Janpath Road, New Delhi.
4. Principal Chief Engineer (Elec.), BSNL (Elect. Zone), Raj. Circle, Jaipur.

.....RESPONDENTS

(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(i) That the respondents be commanded to make a promotion of Executive Engineer (Elec.) higher grade i.e. E.E. (Elec)/AGM/SEEs for the vacancies of 2007, 2008, 2009 and upto 10th June, 2009 as per existing rules 1994 where under Diploma holder (Asstt. Engineer (Elec.)) were eligible for promotion.

(ii) Issue an appropriate order or direction by which the schedule I-B of BSNL MS Rules 2009 pertaining to

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promotion from the post of SEE, Divisional Engineer (Elect.) have been deprived from promotion to the post of EE (Elect.)/AGM be declared ultra Virus, illegal, unconstitutional, irrational and arbitrarily.

(iii) Issue an appropriate order or direction by which Diploma holder Sub Divisional Engineer (Elec.) Wing holding the post of executive on regular basis on the date of notification of Recruitment Rules 2009 be continue to be eligible for promotion on the next higher post i.e. EE (Elect.)/ AGM/ SE like I-A & I-C of the BSNL MS Rules, 2009.

2. Briefly stated, facts of the case are that the applicant is presently holding the post of Sub-Divisional Engineer in the BSNL. It may be stated that before absorption of the applicant in BSNL on 01.10.2000, the applicant was working in the same capacity under the Government of India in Posts & Telegraph Department. The grievance of the applicant in this case is that BSNL has framed the Recruitment and Promotion rules to the post of Executive Engineer/AGM whereby Degree holder Assistant Engineers have been made eligible for promotion and Diploma holder Assistant Engineers have been excluded from being promoted to the higher post. It is contended that as per the old Rules, P & T Building Works (Group 'A') Service Rules 1994 which was applicable to the applicant, ^{when} he was working in the Postal Department and thereafter he was transferred to BSNL, even Diploma holder Assistant Engineers were made eligible for promotion to the post of Executive Engineer/AGM. The grievance of the applicant is of two folds.

3. The first grievance of the applicant is that Recruitment rules for the post of Divisional Engineer (Electrical) which has been notified by the BSNL authorities in the year 2009 and effective from 11.06.2009, all vacancies arising in the cadre of Executive Engineer/AGM for the years 2007, 2008 and 2009 upto 10.06.2009 should be filled in as per the Recruitment Rules of P & T Building Works (Group 'A') Service Rules, 1994. For that purpose, learned counsel for the applicant has placed reliance on general terms & conditions for absorption of Group 'B' officers in BSNL. In Para No. 1 of this policy decision, it has been

stated that till new Service Rules are finalized by the Company, the existing Govt. Rules/Regulations would be applicable. Learned counsel for the applicant has also placed reliance on Para No. 7 of this policy decision, which is in the following term:-

"7. Promotion

- a. The existing rule of promotion to higher grades of parent departments shall continue till BSNL formulates its own rules and regulations.
- b. The officers officiating in higher grades on ad-hoc/local officiating basis will be absorbed in BSNL in the substantive grade only. However, they shall continue to get the higher officiating pay so long as the BSNL management continues the officiating arrangements."

4. Thus from the perusal of Para 1 of the policy decision, it is clear that applicability of existing Govt. Rules and regulations were till ~~now~~ Service Rules are framed by BSNL. Keeping this aspect in view, we have given due consideration to the submission made by the learned counsel for the applicant. Admittedly, the applicant has not been granted promotion till date in terms of Para 7 of the Policy decision. We are of the firm view that so long as the applicant is not promoted as Executive Engineer in terms of Para No 7 (supra), he cannot derive any benefit from this policy decision. We are also of the considered view that when the BSNL has notified rules for the post of Executive Engineer (Electrical)/AGM etc., which has come into force with effect from 11.06.2009, all promotions have to be made in conformity with the provisions contained in that Rule and Recruitment Rules of the Parent Department i.e. Post & Telegraph office cannot be made applicable to the employees of the BSNL which is a Company constituted under the Company Act and has its separate identity. The view which we have taken is also in conformity with the provisions contained in Recruitment & Promotion Rules, 2009 framed by BSNL. At this stage it will be useful to quote relevant portion of Schedule I of the Rules (Annexure /3), which thus reads:-

"Method of Recruitment, Field of Promotion & Minimum qualifying service in the next lower grade for appointment of executives on promotion to Higher Grade of Civil Engineers, Electrical Engineers & Architects of BSNLMS.

Sl. No.	Grade (Equivalent) IDA Pay scale in Rs.	Method of Recruitment	Whether selection by Merit Selection cum seniority or Non-selection post	Field of selection and the minimum qualifying service for promotion

Note 3 of Schedule 1B is in the following terms:-

"3. After publication of this BSNLMS RRs, eligible, Absorbed, Group A Officers shall be promoted/regularized on the vacancies of their quota as per provisions of these RRs. Those who have been working on ad hoc basis may be given next promotion by relaxing the eligibility service condition as a one time measure."

5. Thus from the perusal of aforesaid statutory provisions, it is clear that after the publication of Recruitment Rules by the BSNL authorities, all promotion as also regularization of promotion of officer officiating in higher scale on ad hoc/local officiating basis etc. has to be done as per provisions of that Recruitment & Promotion Rules and not on the basis of Recruitment & Promotion Rules of the parent department.

6. Learned counsel for the applicant has placed reliance upon the decision of the Hon'ble Supreme Court in the case of Y.V. Rangaiah and others vs. J. Sreenivasa Rao & Others, AIR 1983 SC 852, in order to substantiate his arguments that vacancy arising prior to coming into force of the Amendment Rules has to be filled in on the basis of the old Rules. We failed to appreciate how this judgment is of any assistance in favour of the applicant. It is not a case where the applicant was governed by the Recruitment Rules framed by the BSNL and subsequently the said Rule has been amended by the BSNL authority. But it is a case where for the first time, BSNL has framed promotion rules. During the intervening period when the Rules were not framed by the BSNL, arrangement was made as to how the

promotion and other service conditions of employees who have been transferred from the Government to the BSNL has to be regulated. Such interim arrangements according to us, does not confer any legal right on the applicant to give him promotion on the basis of such arrangement, contrary to Statutory Rules. Thus when the new Recruitment Rules for the BSNL employees have been framed, the old Recruitment Rules cannot be made applicable to the BSNL employees.

7. The next grievance of the applicant is that the Rule as framed by the respondents whereby Diploma holder Assistant Engineers have been excluded for promotion to the post of Executive Engineer (Electrical)/ Assistant General Manager may be declared ultra virus and unconstitutional, it may be stated that the matter on this point is no longer res-intega. The same has been settled by the decision of the Hon'ble Supreme court in the case of State of J & K vs. Trilok Nath 1974(1) SLR 536. That was a case where under the old rules, Diploma as well as Degree holder Assistant Engineers were eligible for promotion to the post of Executive Engineers. Subsequently, the Government framed the Rules whereby Diploma Holder Assistant Engineers were excluded for promotion to the post of Executive Engineers. The said action of the Government was challenged on the ground that the action of the respondents is arbitrary as it takes away the vested right of the Diploma Holder Engineers and further once the Diploma as well as Degree holder Assistant Engineer were integrated into one cadre of Assistant Engineer, no discrimination can be made for the purpose of promotion. The contention so raised on behalf of the employees was accepted by the Hon'ble High Court. However, the Apex Court set aside the judgment of the Hon'ble High Court and it was held that classification for the purpose of the promotion can be made on the ground of educational qualification. This decision of the Constitution Bench has been relied upon by the Hon'ble Supreme Court in number of decisions. We do not wish to refer to those decisions. Suffice it to say that in the latest decision of the Hon'ble Supreme Court in the case of M. Rathina Swami & Others vs.

State of Tamil Nadu & Others. JT 2009 (5) 556, the Apex Court while relying upon the constitution decision of the Apex Court in Trilok Nath (supra) and Roop Chand Adeakha vs. DDA, JT 1988 (4) SC 114 in Para 24 has upheld the qualification made on the basis of educational qualification for the purpose of giving preferential treatment to one class of candidates as against another.

8. Thus for the foregoing reasons, we are of the view that applicant has not made out any case for the grant of any relief. Accordingly, the OA is dismissed at admission stage with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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