

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 08.01.2013

MA No. 351/2011 (OA No. 444/2009)

Mr. Rajvir Sharma, counsel for applicant.
Mr. Inderjeet Singh, counsel for respondents.

MA No. 351/2011

Heard on the Misc. Application for restoration of Original Application No. 444/2009. Having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application, we are fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application stands allowed. The Original Application is restored to its original number and status and is taken up for final disposal today itself.

OA No. 444/2009

Heard learned counsel for the parties.

O.A. is 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

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Dated, this the 8th day of January, 2013

ORIGINAL APPLICATION No. 444/2009

CORAM:

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

Kumari Sarita Ratnakar
d/o late Shri Pyare Lal Ji,
aged 24 years
r/o 13/150, Swarn Path,
Mansarovar, Jaipur.

.. Applicant

(By Advocate : Shri Rajvir Sharma)

Versus

1. Union of India
Bharat Sanchar Nigam Limited
through its Chief Managing Director,
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi.
2. The Assistant General Manager (Admn.),
Office of Principal G.M.
Telecom District Jaipur
3. Divisional Engineer,
Regional Telecom Training Centre,
VKIA, Jaipur

.....Respondents

(By Advocate : Shri Inderjeet Singh)

ORDER (ORAL)

Brief facts of the case are that pursuant to advertisement issued by the respondents calling application for appointment to the post of Telecom Technical Assistant (TTA), the applicant applied for the said post. Open competitive examination was held on 11.1.2009 and result of the said examination was declared on 28.2.2009. The name of the applicant figured at Sl.No.52 and she has qualified the examination, but her name was kept in the waiting list. The applicant was provisionally selected vide order dated 5.3.2009. In view of the instructions enclosed with the provisional appointment order, the applicant has executed bond agreement on 13.3.2009 and completed all formalities.

2. The examination, 2008 was reviewed and after providing relaxation in qualifying marks, the candidates who have not obtained their place in merit in the first chance, their cases have been reviewed so that unfilled post may be filled up. The applicant was informed vide order dated 1.7.2009 for training. The total period of training was ten weeks. The applicant has completed her four weeks training and when she was continuing her training order dated 1.8.2009 was received. In view of this order, the applicant was not allowed to continue with training.

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3. Aggrieved and dis-satisfied with the order dated 1.8.2009 (Ann.A/1) the applicant preferred this OA praying for order or direction to quash and set-aside the orders dated 1.8.2009 (Ann.A/1), July, 2009 (Ann.A/2) and order dated 1.6.2009 with further direction to the respondents to allow her to continue the training to the cadre of TTA for the remaining period in all respects with all consequential benefits.

The learned counsel appearing for the applicant placed reliance on the judgment rendered by the Central Administrative Tribunal, Jodhpur Bench in OA No.168 and 169 of 2009 decided on 11.2.2010 and prayed that in view of the order passed by CAT-Jodhpur Bench, the applicant may be allowed to complete her training and be given appointment on the post of TTA.

4. On the contrary, learned counsel appearing for the respondents raised preliminary objection regarding maintainability of the OA as the applicant has failed to implead the affected persons as party in the present OA who have been selected in pursuance of the order of July, 2009 (Ann.A/2) and in view of non-joinder of parties, the OA itself deserves to be dismissed. On merit, the respondents have submitted that the

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respondents have invited application for appointment on the post of TTA. The result of the said examination was declared on 28.2.2009 in which name of the applicant was shown at Sl.No.52 and she was kept in the waiting list. There were 10 vacancies for OC, 2 for ST, 3 for SC and 4 for OBC category. The applicant belongs to SC category and was kept in waiting list along with 2 other SC candidates. Name of the applicant was shown at Sl.No.52 and she is 3rd in the waiting list of SC category. Against 3 SC quota vacancies, 3 candidates qualified and selected are- Shri Trilok Mahawat, Sl.No.47, Shri Heera Lal Chitoriya at Sl.No.48 and Shri Dinesh Kumar Lakhial at Sl.No.49.

It is further contended that waiting list is kept so that in case the qualified and selected candidates did not join as TTA then the candidates of waiting list can be sent for training for the unfilled vacancies. It is further submitted that vide order dated 13.7.2009 the result already declared vide order dated 28.2.2009 was reviewed as per BSNL Headquarter, New Delhi instruction for filling the unfilled posts. In Jaipur SSA, this list has not been operated even for their pre-appointment formalities since all the vacancies in SC category in Jaipur SSA have already been filled in. In case, in future, if any selected candidate do not join as TTA in Jaipur SSA and the post remained unfilled then only these

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unfilled posts will be filled from already declared candidate vide previous order dated 28.2.2009.

5. The learned counsel appearing for the respondents further submitted that the ratio decided by the CAT-Jodhpur Bench in OA No.168 and 169/2009 vide order dated 11.12.2010 is not applicable to the facts and circumstances of the case, and even otherwise also the order dated 11.12.2010 has been assailed by the BSNL before the Hon'ble High Court at Jodhpur by way of filing D.B. Civil Writ Petition No.1947/2010 and the Division Bench of the Hon'ble High Court has admitted the writ petition and operation of the order passed by the CAT-Jodhpur Bench dated 11.12.2010 has been stayed. Therefore, the judgment of the CAT-Jodhpur Bench is not applicable and referred the judgment rendered by this Bench of the Tribunal in OA No.360/2009 rendered on 10th September, 2009 in the case of Raju Lal Bairwa vs. BSNL. and submitted that the judgment rendered by this Bench in the case of Raju Lal squarely covers the controversy, wherein the Hon'ble Bench held as under:-

"9. It is admitted case between the parties that no person with relaxed standard was sent for training so far as Jaipur SSA is concerned. The respondents have stated that against 3 vacancies meant for SC, 3 SC candidates, whose names find mention at Sl.47 to 49 and at Sl.No. 11 to 13 in the list of Jaipur SSA have already been sent for training. The respondents have also categorically stated that due to



bonafide mistake, the applicant was also sent for training. The question which requires our consideration is whether mandamus can be issued to the respondents to allow the applicant to complete the training and to give him appointment. We are of the view that applicant has got no legal right to sent him for training especially when his name appeared in the waiting list. It is a settled position that waiting list is prepared in an examination conducted by the Commission or any other authority does not furnish a source of recruitment. It is operative only for the contingency if the selected candidate does not join than the person from waiting list may be pushed up and sent for training/be appointed. The Apex Court in the case of Vice Chancellor, University of Allahabad & Others vs. Dr. Anand Prakash Mishra & Others, 1997 SCC (L&S) 1265, has held that keeping the candidates in the waiting list does not confer vested right in his favour much less and indefeasible right. Thus in view of the settled position, we are of the view that applicant has got no legal right to be sent for training especially when there was no vacancy available and against 3 vacancies meant for SC, 3 persons have already been sent for training and they are already undergoing the training. Similarly, we are of the view that the applicant is also not entitled to the relief on the ground of discrimination. It is settled position that Article 14 is positive concept which cannot be enforced in negative manner. Further simply because some persons at Jodhpur, who were similarly situated, have been allowed to join the training in view of the interim stay passed by the Jodhpur Bench will neither make it case of discrimination nor are interim stays binding. The Apex court in the case of Empire Industries Ltd. & Others vs. Union of India & Others, AIR 1986 SC 662, has already held that interim stay is not binding and even subsequent Bench on same facts can also pass different order and passing of such orders are not discrimination.

10. Thus in view of what has been stated above, we are of the firm view that it is not a case where any legal right of the applicant has been infringed. Accordingly, no

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mandamus can be issued to the respondents thereby directing them to allow the applicant to complete the training."

6. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and the judgments referred and relied upon by the respective parties, so far as factual aspect is concerned, it is not disputed that name of the applicant figured in the waiting list and it is also not disputed that 3 vacancies for SC category have been determined and all 3 vacancies have been filled up. We are not convinced with the submission made on behalf of the applicant that calculation of SC category vacancies has not been done as per roster system. Since no vacancy is available, the question of giving appointment to the applicant does not arise in view of the ratio decided by this Bench of the Tribunal in the case of Raju Lal Bairwa (supra) wherein this Tribunal held that the applicant has no right of appointment and when no legal right of the applicant has been infringed, in such eventuality, no mandamus can be issued to the respondents directing them to allow the applicant to complete the training and to appoint her. The judgment of CAT-Jodhpur Bench vide order dated 11.12.2010 cannot be said to be ^god law as operation of the said judgment has been stayed by the Division Bench of the Hon'ble High Court.



7. Thus, in view of the ratio decided by this Bench in the case of Raju Lal Bairwa (cited supra), we are of the firm view that it is not a case where any interference whatsoever is required by this Tribunal to direct the respondents to allow the applicant to complete the training. Consequently, the OA being devoid of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Jdgl. Member

R/