

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

OA 481/2009

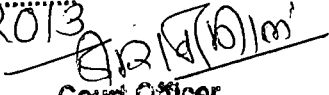
02/01/2013

Mr. Vijay Singh, Counsel for applicant.

Mr. Neeraj Batra, Counsel for respondents.

Case adjourned on the request of
learned counsel for applicant (s) /
respondent (s). Put up for hearing

11/01/2013


Court Officer

11-01-2013

OA No. 481/2009

Mr. Vijay Singh, Counsel for applicants.

Mr. Neeraj Batra, Counsel for respondents.

Heard.

⊙ 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. Khatter
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 481/2009

Jaipur, the 11th day of January, 2013

CORAM :

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

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Shri Baboo Lal Godiwal son of Shri Sheo Narayan, aged about 45 years, resident of Plot No. 23, Jaitpuri Colony, Mahesh Nagar, Jaipur. Presently posted as JAO Cash, East PGMTD, BSNL, Jaipur.
2. Shri Jathu Singh son of Shri Prabhu Singh Ji, aged about 46 years, resident of Type 2-18, Mahaveer Nagar, Barmer. Presently posted as JAO CMTS, BSNL, Office of TDM, Barmer.
3. Shri Govind Prasad son of Shri Vijay Singh, aged about 52 years, resident of Village Nogla Sogariya P& Tech. Nadbad, Bharatpur. Presently posted as JAO TR, BSNL Office of GMTD, BSNL, Bharatpur.
4. Shri Ramesh Chand Saraf son of Shri Bajrang Lal Saraf aged about 49 years, resident of 10/141, Malviya Nagar, Jaipur. Presently posted as JAO TR BSNL, Tonk.

... Applicants

(By Advocate : Mr. Vijay Singh)

Versus

1. Bharat Sanchar Nigam Ltd. through its Chairman-cum-Managing Director, 3rd Floor, H.C. Mathare Lane, Janpath, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Telecommunication Circle, Sardar Patel Marg, Jaipur.
3. Director (Finance) Bharat Sanchar Nigam Ltd., 3rd Floor, H.C. Mathare Lane, Janpath, New Delhi.
4. Director (HRD), Bhbarat Sanchar Bhawan, H.C. Mathre Lane, Janpath, New Delhi.
5. GM (FP), Bharat Sanchar Bhawan, H.C. Mathre Lane, Janpath, New Delhi.

... Respondents

(By Advocate : Mr. Neeraj Batra)

ORDER (ORAL)

The applicants have filed this OA praying for the following reliefs:-

- “(a) the respondents may kindly be directed to place entire record related to the present case before this Hon’ble Tribunal.
- (b) the impugned orders/communications dated 17.08.2009 and 22.08.2009 may kindly be quashed and set aside.
- (c) The respondents may kindly be directed to give regular appointments/promotions to the applicants on the post of JAO in Rajasthan Circle w.e.f. October 2007 with all consequential benefits.
- (d) It may kindly be held and declared that unless the applicants are regularly/substantively promoted/appointed on the post of JAO in Rajasthan Circle after undergoing a formal training to be conducted by the respondents, the respondents are not entitled to convene/conduct the JAO departmental competitive examination as notified by the respondents by the impugned orders.
- (e) Any other appropriate order or direction which this Hon’ble Tribunal may be considered just and proper in the facts and circumstances of the case may kindly also be passed in favour of the applicants.
- (f) Cost of this OA may also be awarded in favour of the applicants.”

2. Learned counsel for the applicant submitted that the applicants were initially appointed on the post of Telephone Operator in the services of erstwhile Department of Telecommunication (DOT). That there was a next higher post of Junior Accounts Officer (JAO) which was earlier required to be filled in accordance with the provisions contained under Junior Accounts Officers Services Telecommunication Wing (Group C) Recruitment Rules of 1977. That Government of India converted DOT and constituted Bharat Sanchar Nigam Ltd. (BSNL). The BSNL framed Recruitment Rules of JAO of 2001 which came into force on 31.08.2001. Although 2001 Rules were framed by BSNL, yet after considering the various representations

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submitted by Staff Unions as also the grievances of the employees who could not be promoted on the post of JAO under the Rules of 1977 by erstwhile DOT, the respondents decided to conduct JAO internal departmental competitive examination as per the old Scheme and Syllabus.

3. The applicants participated in the Internal JAO Examination held by the respondents on 25.03.2003. The applicants qualified the said examination. The applicants nos. 1, 2 and 4 were given officiating appointment against the vacant post of JAO w.e.f. 03.11.2003 and applicant no. 3 was given such appointment on 16.10.1998. The applicants are continuing on the post of JAO since then. The respondents did not conduct JAO Part II examination immediately after the expiry of 6 months for no fault of the applicants. However, the respondents issued a communication dated 12.12.2005 including circle wise break-up of vacancies/post of JAO available for appointments by the qualifying candidates. The respondents for Rajasthan Circle disclosed 16 numbers of vacancies/posts to be filled in from amongst the candidates likely to be qualified in JAO Part II Examination.]

4. Subsequently Part II Examination was held on 20.12.2006. All the applicants participated in the said examination and the result thereof was declared vide communication dated 03.10.2007 (Annexure A/15). The respondents declared 16 candidates selected/qualified and appointed in order of merit.

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The applicants although declared qualified yet due to non-availability of posts, their names could not be included in Annexure-1 appended to the communication dated 03.10.2007. The learned counsel for the applicant further argued that although the applicants qualified the examination held in accordance with the old criteria for substantive appointment on the post of JAO yet due to arbitrary application of provisions contained under the Rules of 2001, providing lesser percentage of number of posts, the applicants were not given appointment.

5. The learned counsel for the applicant further argued that the respondents issued communication dated 29.05.2007 inviting options from the candidates declared qualified in JAO Part II Examination but could not be given appointments due to non availability of vacancies/post in their circles viz. J&K, NE-1, NE-II and Assam (Annexure A/16). In pursuance of this communications, all the applicants gave their options but applicants were informed in 2010 that their options could not be accepted because vacant posts in those circles have subsequently been filled up.

6. Learned counsel for the applicant further argued that respondents have issued orders dated 17.08.2009 and 22.08.2009 (Annexure A/1 and A/2 respectively) and have again decided to convene JAO Internal Competitive Examination Part II without first safeguarding the rights of the applicants. They have shown 155 vacancies/posts available in Rajasthan Circle out of

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2868 available in BSNL. This clearly shows that the posts/vacancies remained available throughout the period from October, 2007 in the Rajasthan Circle but the respondents while acting arbitrarily, illegally and malafidely, in gross violation of the fundamental rights of the applicant, have not extended the benefit of substantive appointment on the post of JAO after asking them to undergo a formal training.

7. Learned counsel for the applicant also argued that some of the candidates who participated in the Part II examination conducted on 2006 but could not clear all the papers, yet they were entitled to be given more chances to clear the said examination by the orders of Hon'ble Allahabad High Court in the case of **Sanjeev Kumar & Others vs. CMD, Bharat Sanchar Nigam Ltd., New Delhi & Others** [Civil Misc. Writ Petition No. 55710/2005 decided on 08.03.2006]. All the candidates ultimately cleared the examination and the respondents vide order dated 28.09.2009 gave appointment to those candidates. The case of the applicants is on a much higher footing as compared to the candidates who have been given appointment on the post of JAO vide order dated 28.09.2009 in pursuance to the proceedings initiated by them before the Allahabad High Court. Therefore, he argued that the present OA be allowed.

8. On the contrary, learned counsel for the respondents submitted that the JAO Part II Competitive Examination held on 22 to 22 December, 2006 was notified as competitive in nature

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and the number of vacancies for the said examination were also notified before conduct of the examination. The applicants appeared in the said competitive examination. All the applicants got the minimum qualifying marks in the above competitive examination but could not be selected for promotion to the post of JAO as per the merit of the result declared for the available 16 vacancies in Rajasthan Circle. He further submitted that all the applicants have also applied for the examination to be conducted from 04th to 06th January, 2010 and all the applicants are eligible to appear in the ensuing examination. He further argued that many candidates are waiting to appear in the examination for the last three years. He further argued that order passed by the Hon'ble High Court is confined to the petitioners only and hence this order is not applicable to the applicants for the Rajasthan Circle. No injustice whatsoever has been done to the applicants. They appeared in the examination as per the old DOT syllabus and are also eligible to appear in the JAO Part II Examination to be held on 04th to 06th January, 2010.

9. He further argued that option received for promotion to the post of JAO in other circles viz. J&K, NE-1, NE-II and Assam circles were sent to BSNL Head Office (Annexure R/4). He submitted that options called for was not any confirmation to appointment of the applicants in other circles. He argued that since the applicants were lower in merit, therefore, they could not be given appointment. Therefore, this OA has no merit and it should be dismissed with costs.

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10. He further drew our attention to the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2603/2010 decided on 08.04.2011 (**Sunita Garg vs. Chief Managing Director, BSNL, New Delhi & others**). He submitted that the present controversy is squarely covered by the said order of the CAT, PB, New Delhi.

11. Heard the rival submissions of the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. It is not disputed that the applicants appeared in JAO Part II Departmental Competitive Examination held in December, 2006. That the applicants got the qualifying marks but since they were lower in merit, therefore, they could not be given appointment on the post of JAO. Their options to be appointed in other circles were sent to the BSNL Head office but since vacancies in those circles were filled up subsequently, therefore, the applicant could not be posted as JAO in those circles.

12. We have carefully gone through the order dated 08.04.2011 in OA No. 2603/2010 (**Sunita Garg vs. Chief Managing Director, BSNL, New Delhi & others**) passed by the CAT, PB, New Delhi. The Learned Principal Bench while disposing of OA No. 2603/2010 also considered the decision of Hon'ble Supreme Court in the case of **Rakhi Ray & Others vs. The High Court of Delhi & Others**, 2010 (2) SCALE 93. The

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Principal Bench has also considered the judgment of the Hon'ble Supreme Court in the case of **Navin Kumar Jha vs. Lt. Governor & Others**, 2010 (2) SCALE 10. In that judgment, the Hon'ble Apex Court has followed the judgment passed in Rakhi Ray. The Apex Court has held that filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. Thus Principal Bench held that the ratio laid down by the Apex Court in **Rakhi Ray's case** followed in **Navin Kumar Jha's case** is squarely applicable in the facts & circumstances of the present case. We are of the opinion that the controversy raised in the present OA is squarely covered by the order dated 08.04.2011 passed in OA No. 2603/2010 (**Sunita Garg vs. Chief Managing Director, BSNL, New Delhi & others**).

13. It is admitted that in 2006, 16 posts of JAO were notified in Rajasthan Telecom Circle, out of which 12 were meant of OC and 4 for reserved category. All the posts meant for OC were filled up as per the merit list and since the applicants were below in merit, therefore, they could not be offered appointment for the post of JAO. Therefore, we are of the opinion that there is no illegality/irregularity on the part of the respondents in not appointing the applicants as JAO. The CAT, Principal Bench, New Delhi in Para No. 9 of their order dated 08.04.2011 passed in OA NO. 2603/2010 (**Sunita Garg vs. Chief Managing Director, BSNL, New Delhi & others**) has held that it is also settled law that when the vacancies advertised are filled up, the process of

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selection for those vacancies got exhausted and come to an end, the same list cannot be kept subsisting and operative for the purpose of filling up of all other future vacancies that would naturally amount to deprivation of rights of other candidates.

14. With regard to the averment of the learned counsel for the applicant that the respondents have invited the options of the applicants to be appointed in other circles but they were not given offer of appointment to the post of JAO in other circles, learned counsel for the respondents submitted that merely asking for options does not give any legal right or create equity in favour of the applicants. That the applicants could not be posted as JAO in other circles because the situation prevailing at the time of initial proposal did not exist. Subsequently, sufficient number of candidates in those circles became available as a result of 2010 Examination. We are in agreement with the averments made by the learned counsel for the respondents. The respondents tried to accommodate the applicants on the post of JAO in other circles but since the vacancies in other circles were filled up, therefore, they could not be given appointment on the post of JAO in other circles inspite of their option. Thus we are of the view that even on this ground, the applicants are not entitled for any relief.

15. With regard to the averment of the learned counsel for the applicant that in view of the judgment rendered by the Hon'ble Allahabad High Court in the case of **Sanjeev Kumar & Others**

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[Civil Misc. Writ Petition No. 55710/2005 decided on 08.03.2006], the applicant should have been given another opportunity to appear in the Examination, the learned counsel for the respondents argued that the judgment given by the Hon'ble Allahabad High Court is not applicable under the facts & circumstances of the present OA. We have carefully gone through the judgment of the Hon'ble Allahabad High Court and we are of the view that the facts & circumstances of that case were different than the facts & circumstances of the present OA. Therefore, the judgment of the Hon'ble Allahabad High Court in the case of **Sanjeev Kumar & Others vs. CMD, Bharat Sanchar Nigam Ltd., New Delhi & Others** [Civil Misc. Writ Petition No. 55710/2005 decided on 08.03.2006] would not be applicable in the present case.

16. The respondents have already made it clear that the applicants are entitled to appear in the subsequent examination which was to be conducted in the year 2010, therefore, we are of the opinion that no injustice has been done to the applicants. Thus the OA has no merit.

17. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)