

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3508/2009

Thursday, this the 3rd day of September 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. A. K. Mukati
Superintending Engineer (Civil)
Bharat Sanchar Nigam Ltd.,
Civil Circle,
Bhopal (MP).

.. Applicant

(Mr. Sanjay K. Tyagi, Advocate)

Versus

1. Union of India through
Secretary,
Department of Telecom
Sanchar Bhawan, 20, Ashok Road,
New Delhi.
2. Member (T)
Department of Telecom
11th Floor, Sanchar Bhawan,
20, Ashok Road,
New Delhi.
3. Senior DDG (BW)
Department of Telecom
11th Floor, Sanchar Bhawan,
20, Ashok Road,
New Delhi.
4. Bharat Sanchar Nigam Ltd.,
Through its Chairman-cum-
Managing Director,
Bharat Sanchar Bhawan,
Janpath,
New Delhi.
5. Satish Kumar Bhardwaj
S/o Late Joginder Pal,
Working as DGM (Vigilance)
BSNL, Haryana Circle,
Ambala Cantt.

6. S. N. Mudgal
S/o Mr. Prakash Sharma
Working as Superintendent Engineer (Civil)
MTNL (Delhi Unit),
1st Floor, Eastern Court,
Janpath
New Delhi-50

..Respondents

(Mr. Krishan Kumar, Advocate for respondent Nos. 1 to 3,
Mr. Deepak Thukral, Advocate for respondent No.4 and
Mr. Yogesh Sharma, Advocate for respondent Nos. 5 and 6)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The applicant herein joined the Post & Telegraph Department as Assistant Executive Engineer (Civil) in the year 1982. In 1990, he got promotion as Executive Engineer (Civil) on regular basis in terms of relevant Rules. Under the Rules, the quota in the grade of Executive Engineer (Civil) meant to be filled up by promotion of Assistant Executive Engineers and Assistant Engineers was 2 : 1, i.e., 66% by promotion of Assistant Executive Engineer and 33% by promotion of Assistant Engineer. Subsequently, Rules were amended and quota for Assistant Executive Engineer and Assistant Engineer was changed to 50 : 50. In any case, with the incorporation of BSNL, on 1.10.2000 the applicant herein went to the BSNL on deemed deputation and was finally absorbed there in terms of letter dated 4.10.2005. After he joined the BSNL, the seniority list of Executive Engineer in Ministry of Communication and Information Technology (Department of Telecom) was finalized on 26.8.2009. In view of the amendment in the Recruitment Rules and variation in the promotional quota for Assistant Engineer and Assistant Executive Engineer, the seniority of the applicant was depressed. In the wake, he filed present Original Application praying therein:-

“a) Quash the impugned Office Memorandum No.33-2-2003-CWG dated 26.8.2009 whereby the respondent Department of Telecom prepared the seniority list disturbing the applicant’s settled position on the strength of applying the wrong ratio of 1:1 instead of 2:1 in respect of the applicant’s promotion in the year 1990;

b) direct B.S.N.L., the 4th respondents to carry out the cadre management in respect of its own officers absorbed therein, including the preparation of the seniority list in accordance with the Recruitment Rules prevalent at the relevant time.

c) pass such other and further directions as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be issued in favour of the applicant.”

2. According to learned counsel for applicant, before the issuance of impugned seniority list, he had been absorbed in the BSNL. As such, the list should not have contained his name.

3. Mr. Yogesh Sharma, learned counsel for private respondents submitted that there is no infirmity in the seniority list fixed in the wake of amendment in the Recruitment Rules and change in promotional quota for Assistant Engineer and Assistant Executive Engineer. According to him, in terms of the amendment in the Recruitment Rules the applicant, who was a direct recruit Assistant Executive Engineer, could not have been promoted as Executive Engineer in the year 1990, as his promotion was found in excess of the quota meant for the category.

4. We heard the learned counsels for the parties and perused the record.

5. It is seen that while deciding M.A. Nos.162/2010, 215/2010, 235/2010 as well as O.A. No.10/2010 in terms of Order dated 6.1.2011, a Division Bench of this Tribunal (Patna Bench) ruled that once certain employees had already gone on deputation and subsequently absorbed in BSNL, seniority list dated 26.8.2009, i.e., the list impugned herein, should

not have contained their names. Paragraphs 52 and 58 of the Order reads thus:

“52. As has been rightly observed by the Principal Bench of this Tribunal in its order in paragraph 9 dated 2.7.2008 passed in O.A. NO.258/2005 Kailash Chandra Vs. UOI, any combined seniority list of the DOT prepared on or after 1.4.2004 would not any more be applicable for officers absorbed under MTNL/BSNL. Therefore, it is held and once again clear that neither the applicant nor any other similarly situated person can claim any relief either from this Bench of this Tribunal, or from any other Benches of this Tribunal, or from any other Court above, on the basis of a wrongful inclusion of his name in a list prepared either on 12.4.2004, or on 26.8.2009, when there was no case for his name to be found to be occurring in that list at all, his services having been transferred irrevocably and finally alongwith his lien to the newly created Corporation much before that.

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58. In the result, we hold that both the seniority lists of Executive Engineers dated 12.4.2004 and the supposedly final seniority list of 26.8.2009 are perverse in the eyes of law, as none of these two lists could have included the names of the officers at the Executive Engineers level who had already stood irrevocably deputed and transferred along with their lien to the newly created corporations of BSNL/MTNL, and the umbilical cord and whom had been irrevocable cut by the Department of Telecommunication through its orders operating with retrospective effect from 1.0.2000, like the orders dated 31.3.2004 operating in the case of the applicant. The name of either the applicant, or of any of the other officers whose lien stood irrevocably transferred to the newly created Corporation could not have been included in a supposedly final seniority list of EE (C) of DOT as on 8.4.2004 notified on 12.4.2004, or in the subsequent modified final seniority list notified through the O.M. dated 26.8.2009. The seniority list drawn up by DOT could have included only the names of those EEs who had continued to remain on the rolls of the DOT from 1.4.2004 onwards, and whose services had not been irrevocably transferred to the BSNL/MTNL even as on that date. But in view of the numerous judgments already delivered on the basis of these seniority lists, and the final seniority list dated 26.8.2009 having been challenged before the Principal Bench also, we desist from passing any precipitate orders on these seniority lists.”

6. As has been ruled by Hon'ble Supreme Court in **Sub Inspector Rooplal & another v. Lt. Governor through Chief Secretary, Delhi & others**, (2000) 1 SCC 644, a Bench of this Tribunal should give due

regard to the Order passed by another Bench of equal strength and need to refer the matter to Larger Bench in the event of there being difference of opinion. We do not find any reason to take a view different from the one taken by the Patna Bench of this Tribunal (ibid).

7. In the wake, the Original Application is disposed of with direction to the official respondents to examine the claim of the applicant for exclusion of his name from the impugned seniority list and fixation of his seniority separately in the BSNL, in view of the aforementioned Order of the Patna Bench, within three months from the date of receipt of a copy of this Order and take a final decision under intimation to the applicant. Indubitably, we have not quashed the impugned seniority list. No costs.

(K. N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

September 3, 2015

/sunil/