

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/021/1244/2012

Date of Order: 24.09.2018

Between:

K.S. Suresh,
S/o. K. Satyanarayana Rao,
Aged about 49 years,
Occ: Junior Telecom Officer (RLUs), BSNL,
O/o Sub Divisional Engineer (RLUs),
Kurnool.

... Applicant

AND

1. The Union of India rep. by its
Secretary,
Dept. of Telecommunications,
20 Ashoka Road,
New Delhi – 1.
2. The Bharat Sanchar Nigam Limited
Rep. by its Chairman cum Managing Director,
BSNL Corporate Office,
Statesman House,
New Delhi.
3. The Chief General Manager,
Andhra Pradesh Telecom Circle (BSNL),
Door Sanchar Bhavan,
Nampally Station Road,
Abids,
Hyderabad – 500 001.

.....Respondents

Counsel for the Applicant	: Dr. A. Raghu Kumar
Counsel for the Respondents	: Mrs. K. Rajitha, Sr. CGSC Mr. M.C. Jacob, SC for BSNL

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDL. MEMBER
THE HON'BLE MR. B.V.SUDHAKAR, ADMIN. MEMBER

ORAL ORDER

(Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member)

Heard Shri B. Pavan Kumar representing Dr. A. Raghu Kumar, learned counsel for the applicant and Shri M.C. Jacob, learned Standing Counsel appearing for the Respondents.

2. The O.A. is filed to declare the action of the respondents in not considering the case of the applicant for appointment as JTO under the Walk-in-Group in the batch of 1995 Departmental Promotee JTOs while considering the cases of the juniors as bad in law and consequently hold that the applicant is entitled for appointment as JTO against the vacancies of 1995 of Departmental Quota as JTOs and for fixation of notional seniority, notional pay fixation w.e.f 15.7.1996 and actual monetary benefit from 2.8.1999.

3. It is submitted by the applicant in the O.A. that after completing his Diploma in Engineering, he joined the erstwhile Department of Telecommunications as Technician on 11.8.1986. He was promoted to the post of Transmission Assistant after successfully passing the Departmental Competitive Examination vide respondent's letter dated 16.2.1990. Thereafter, the applicant completed his B.Tech (Mechanical Engineering) through Jawaharlal Nehru Technological University in the year 1989.

4. The department vide its Circular dated 12.8.1994 decided to treat those

Phone Inspector/ Transmission Assistants/ Wireless Operators/ Auto Exchange Assistants who hold the qualifications prescribed for outsiders' recruitment to the cadre of JTOs i.e. the Bachelor of Sciences or Bachelor of Engineering or Bachelor of Technology etc., as Walk-in-Group for the purpose of promotion to the JTO and that they would be sending for JTO. Therefore, the applicant shall be eligible for promotion to the post of JTO as Walk-in-Group in the batch of 1995 as he would be completing the requisite years of service i.e. five years for the purpose of being treated as JTO in Walk-in-Group.

5. As the case of the applicant was not considered, he filed O.A. No.148/1997 seeking a direction from the Tribunal to the respondents to depute the applicant for JTO's training against the vacancies for the recruitment year 1995 under the Walk-in-Group as per the pre-amended Recruitment Rules 1990 on priority basis and to appoint him as JTO on his successful completion of training vis-a-vis his juniors who qualified for promotion under the Qualifying Screening Test. The Tribunal disposed of the O.A. by directing the respondents to examine the availability of vacancies and consider the case of the applicant if he is eligible for the vacancies earlier to 8.2.1996 and decide the case for promotion against the appropriate group vide its order dated 24.9.1998.

6. While so, the applicant was also qualified as JTO in the Screening Test under 35% quota of the JTO Recruitment Rules 1990 and was selected in that quota and was sent for training under 35% quota from 15.3.1999 to 30.7.1999 and accordingly was promoted as JTO on 2.8.1999 vide 3rd respondent's letter dated 17.11.1999. In the meanwhile, the department released a seniority list in

December, 2004 wherein it promoted several persons during 1996 even before considering the case of the applicant under 35% quota.

7. It is specifically contended by the applicant that two Phone Inspectors – Sh. N. Muralikrishna & Shr. B.V.S.S. Narasimham, who were promoted as Phone Inspectors on 16.12.1990 & 20.6.1991 respectively and are similarly situated as that of the applicant and who were also not considered under the Walk-in-Group, were promoted to as JTO in the 35% quota in the year 1999 as in the case of the applicant. These Phone Inspectors who became JTOs under 35% quota filed O.A.s 424/2000 & 110/2002 which were disposed of on 17.7.2001 & 18.7.2002 respectively with a direction to the department to consider, prepare and finalize the Gradation List of JTOs of the Recruitment Year 1995 expeditiously. Subsequently, the above two JTOs were considered for placement in the 1995 batch of departmental candidates and were accordingly placed at Sl.No.45 & 76, ignoring the claim of the applicant. It is the submission of the applicant that he is also similarly situated to that of the above two individuals and is senior to Shri B.V.S.S. Narasimham, who is placed at Sl.No.76 as the said Narasimham joined as Phone Inspector on 26.6.1991 whereas the applicant joined as Phone Inspector w.e.f. April, 1990 and as such, he deserves to be considered for placement in 1995 batch between N. Muralikrishna and B.V.S.S. Narasimham.

8. It is further submitted that subsequently Shri N. Muralikrishna and Sh. B.V.S.S. Narasimham approached the Hon'ble High Court of Andhra Pradesh in W.P. No.22939/2005 seeking notional seniority, notional pay fixation and

consequential pay benefits w.e.f. 15.7.1996 and actual monetary benefits w.e.f. 2.8.1999 i.e. from the date on which they were promoted as JTOs and the same was transferred to this Tribunal in T.No.12/2010. The same was allowed on 16.8.2010. However, in the case of the applicant neither the applicant was considered under the Walk-in-Group as per the orders of the department in 1995 batch nor he was considered for notional seniority and notional pay fixation as is done in the case of the above named Phone Inspectors/ JTOs. Therefore, he filed the present O.A. seeking the aforementioned relief.

9. It is contended by the respondents in their reply statement that the Tribunal in O.A. No.148/1997 issued a direction to examine the case on the basis that if any vacancy exists prior to 8.2.1996, those vacancies should be filled on the basis of the old recruitment rules and if the vacancies occurred after the said date, the amended rule should be pressed for filling up. As the vacancies arose subsequent to the notification of recruitment rules dated 9.2.1996, applicant was promoted w.e.f. 2.8.1999 and posted at Ananthapur SSA as JTO. The applicant never made any grievance in regard to said appointment at any point of time and the representation dated 15.10.1998 said to have been submitted by him after the decision in the earlier O.A. was not received by the authorities. Therefore, according to the Respondents, the present O.A. filed by the applicant seeking promotion and seniority w.e.f. 15.7.1996 after long 16 years attracts delay, laches and limitation under the Administrative Tribunals Act and is liable to be rejected on the said ground alone.

10. Nextly, it is contended by the respondents that the applicant is seeking

revision of his seniority without impleading any of the seniors going to be affected by such interpolation with recruitment year 1995 to 1998 and on the said ground of not impleading necessary and proper parties to the proceedings, the O.A. is liable to be rejected.

11. It is also the contention of the respondents that Sh. N. Murali Krishna was qualified in the screening test for promotion to JTO on 21.9.1995 under Walk-In-Group following the 1990 recruitment rules and according to the direction in the O.A., the respondents accepted his contention and intimated that gradation list of 1995 is under finalisation and hence direction is issued to prepare and finalise the gradation list. They also stated that similar is the case of Shri BVSS Narasimham.

12. Therefore, the main contention of the respondents is that the applicant never responded to the Circular dated 12.8.1994 issued by the 3rd respondent by submitting his application with particulars called for taking further action in the matter to consider him in the Walk-In-Group as the applicants in the above referred OAs .

13. Now the point for consideration is whether the applicant is entitled for the relief prayed for in the O.A.

14. The Circular referred to by the respondents was issued on 12.8.1994 directing the eligible PIs/TAs/WOs/AEAs to submit their applications together with the attested copies of their educational qualifications for the purpose of considering them for promotion to the cadre of JTOs. According to the respondents, the applicant did not respond to the Circular dated 12.8.1994

issued by the department. The respondents however did not take such plea in their reply statement in O.A.No.148/1997. The very fact that the applicant filed O.A. No.148/1997 seeking the relief of consideration for promotion in respect of the vacancies for the recruitment year 1995 itself shows that as there was no response from the respondents, he was constrained to file the aforementioned O.A. However, it is not the case of the respondents that he was not eligible for promotion for the vacancies for the recruitment year 1995. Their only contention seems to be that the applicant did not respond to the aforementioned circular and, therefore, as per the direction of the Tribunal, they considered him for subsequent vacancies. They also contend that the seniority list was published in 2004 including the names of Shri N. Murali Krishna & Shri B.V.S.S. Narasimham and the applicant who did not challenge the seniority list was precluded from agitating for inclusion of his name in the vacancies for the recruitment year 1995 with retrospective effect.

15. The respondents are right in their contention if the applicant did not at all respond till the publication of 2004 seniority list and if for the first time he approached the Tribunal after a lapse of 16 years seeking retrospective promotion. He has been agitating the same issue by filing O.A. No.148/1997. The juniors of the applicant were considered for promotion in respect of the vacancies for the recruitment year 1995 but the claim of the applicant was not considered though it is well within the knowledge of the respondents that he filed O.A. No.148/1997 and obtained a direction from the Tribunal. Excepting their contention in their reply statement, no material is placed on record indicating that the applicant did not respond to the Circular at appropriate time.

16. Learned Standing Counsel for the respondents relied on the order dated 11.3.2013 passed by this Tribunal in O.A. 1207/2010 wherein the applicant in the said case sought the same relief. But it was the case where the applicant did not respond to the Circular at appropriate time and also he was not having eligibility of completing five years of regular service in the cadre of Phone Inspector. Therefore, the decision rendered by the Tribunal in the said case cannot be made applicable to the facts of the present case. In the instant case, we are of the considered view that the relief prayed for by the applicant does not suffer from any delay or laches. He has been continuously pursuing the matter and at the time of considering the cases of Shri N. Murali Krishna and Shri B.V.S.S. Narasimham, the respondents ought to have considered the name of the applicant also. Therefore, the contention of the non-joining of other affected parties as respondents in the instant case cannot be fatal to the O.A. filed by the applicant.

17. Since the respondents themselves overlooked the case of the applicant in spite of the direction of the Tribunal, the applicant is entitled for the relief prayed for in the present O.A. The O.A. is, therefore, allowed. It is held that the applicant is entitled for appointment as JTO against the vacancies of 1995 of Departmental Quota as JTOs and for fixation of notional seniority, notional pay fixation w.e.f 15.7.1996 and actual monetary benefit from 2.8.1999. The Respondents are directed to comply with the order of the Tribunal within a period of eight weeks from the date of receipt of a copy of the order. There shall be no order as to costs.

(B.V.SUDHAKAR)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

pv