

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. Nos.021/355, 020/612 and 021/910 of 2017

Date of CAV:28.11.2017.

Date of Order : 05.01.2018.

O.A.No.021/355/2017.

Between :

D.Kantha Rao, s/o late Mallaiah,
aged about 51 yrs, Occ:Junior Engineer,
O/o Sub-Divisional Engineer, REC,
Hanamkonda, Warangal-506 001. ... Applicant

AND

1. The Union of India, rep., by its Secretary,
Dept. Of Telecommunications, M/o Communications
and IT, Sanchar Bhavan, 20, Ashoka Road,
New Delhi-1.

2. The Bharat Sanchar Nigam Limited,
rep., by its Chairman-cum-Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi-1.

3. The Chief General Manager,
Telangana Telecom Circle (BSNL),
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad-500 001.

4. The Principal General Manager,
Telecom District, Warangal,
Warangal District.

5. The Assistant General Manager (Recruitment-I),
Recruitment Branch, BSNL, Corporate Office,
2nd Floor, Eastern Court, New Delhi.

6. The Assistant General Manager (R&E),
O/o Chief General Manager,
Telangana Telecom Circle. ... Respondents

Counsel for the Applicant ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mr.M.C.Jacob, SC for BSNL
... Mrs.K.Rajitha, Sr.CGSC

O.A.No.020/612/2017.

Between :

Y.Surya Somayajulu, s/o Y.Bhaskara Sastry,
aged about 40 yrs, Occ:Senior TOA(G), Accounts,
H.R.No.199800453, O/o the General Manager, Telecom
District, BSNL, Eluru. ... Applicant

AND

- 1.Bharat Sanchar Nigam Limited,
rep., by its Chairman-cum-Managing Director,
BSNL Bhavan, Janpath, New Delhi-1.
2. The Chief General Manager, A.P.Telecommunications
(BSNL), Door Sanchar Bhawan, Abids, Hyderabad-500 001.
3. The General Manager, Telecom District, BSNL, Eluru.
4. The Union of India, rep., by its Secretary,
Dept. Of Telecommunications, 20, Ashoka Road,
New Delhi.
5. The Chief General Manager, National Academy of
Telecom Finance & Management, Hyderabad-500 032.
6. The Chief General Manager, Telecom, BSNL,
A.P. Circle, Vijayawada. ... Respondents

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| Counsel for the Applicant | ... Mr.K.Venkateshwara Rao |
| Counsel for the Respondents | ... Mrs.K.Rajitha, Sr.CGSC for R-4 |
| | Mr.A.P.Lakshmi, SC for BSNL |

O.A.No.021/910/2017.

Between :

U.Guru Murthy, s/o U.Mallaiah,
aged about 53 yrs, HRMS No.198701985,
Occ:Assistant Office Superintendent,
O/o Principal General Manager, Telecom District,
BSNL, Warangal, Telangana, State. ... Applicant

AND

1. The Union of India, rep., by its Secretary,
Dept. Of Telecommunications, M/o Communications
and IT, Sanchar Bhavan, 20, Ashoka Road,
New Delhi-1.

2. The Bharat Sanchar Nigam Limited,
rep., by its Chairman-cum-Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi-1.

3. The Chief General Manager,
Telangana Telecom Circle (BSNL),
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad-500 001.

4. The Principal General Manager,
Telecom District, Warangal,
Warangal District.

5. The Assistant General Manager (Recruitment-I),
Recruitment Branch, BSNL, Corporate Office,
2nd Floor, Eastern Court, New Delhi.

6. The Assistant General Manager (R&E),
O/o Chief General Manager,
Telangana Telecom Circle. ... Respondents

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|-----------------------------|---------------------------------|
| Counsel for the Applicant | ... Dr.A.Raghu Kumar |
| Counsel for the Respondents | ... Mr.A.P.Lakshmi, SC for BSNL |
| | ... Mrs.K.Rajitha, Sr.CGSC |

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

Having regard to the fact that the issues in all these OAs are similar, we dispose of the same by this Common Order.

2. The facts in a nutshell are that the respondent-BSNL issued a notification on 01.03.2016 for holding a Limited Internal Competitive Examination (LICE) for promotion to the grade of Junior Accounts Officer (JAO) under 40% quota as per the provisions in the Recruitment Rules of JAO dated 31.08.2001 and amendments

thereto. As per the Recruitment Rules of JAO, 40% of the vacant posts in the Circle are to be filled by promotion from the employees working in BSNL through Limited Internal Competitive Examination. The eligibility criteria is as follows:

“(1) Graduation from any recognized University, Institution;

(2) 10 years of regular service in the erstwhile Department/BSNL, in Group “C”.

(3) Candidate should not be more than 53 years of age on 1st Jan of the year in which the internal examination is scheduled to be held.

As against the above eligibility criteria, the applicants herein had acquired a Post Graduate Degree through Distance Education mode from Madurai Kamaraj University after 10+2 without Graduation. The applicant in OA.No.355/2017 appeared for the examination on the basis of a direction given by this Tribunal. The other two applicants appeared for the LICE on the basis of the Hall Tickets issued to them. All the applicants were declared successful in the Written Test and their names figured at Serial Nos.50, 01 and 40 respectively, in the list approved by the Corporate Office on 01.02.2017. However, although the applicants were declared successful, the respondents did not include their names in the list of candidates to be sent for training on the ground that they did not meet the eligibility criteria as per the notification. Being aggrieved by the aforesaid inaction of the respondents, they have filed the present OAs seeking a declaration that they are entitled for appointment to the post of JAO in terms of the Recruitment Rules.

3. The main grounds advanced by the applicants are that the validity of the Post Graduate Degree obtained after 10+2 qualification through Open University has already been examined by the Tamil Nadu Circle, BSNL, in the year 2004 and the Government of Tamil Nadu had clarified to the respondents that on the basis of the

recommendations of the Equivalence Committee the Diploma/Degree/Post Graduate Degree obtained through Open Universities after having passed the Secondary School Examination (10th Standard) and Higher Secondary School Examination (+2) is accepted for appointment/promotions in public services, vide Annexure.A-VIII G.O.Ms.No.107, dtd 18.08.2009. Thus, the validity of the educational qualifications of the applicants was known to the respondents in 2009 itself. Further, for Direct Recruitment to the post of JAO, the qualifications are M.Com/C.A/ICWAI/C.S from a recognized Institution/University. As the applicants are having the higher qualification prescribed for direct recruitees, they meet the eligibility criteria for the post. Hence, the 2nd respondent's letter dated 26.6.2016 stating that the candidates who have acquired Post Graduation after 10+2 without having Graduation are not eligible is erroneous. Further, when a M.Com Degree obtained through the Distance Education is permissible under 50% direct recruitment quota, it is illegal to hold that the Post Graduate Degree holders from Open Universities or Distance Education Mode are not eligible for promotion under LICE to the grade of JAO under 40% quota.

4. In OA.No.355/2013, the applicant raised the additional ground that he had acquired the Madhyama Visharadha conducted by the Hindi Sahithya Sammelan, Allahabad University in 2002 and that this qualification is equivalent to Bachelor of Arts as per G.O.Ms.No.1415, dated 22.07.1970 of the Education Department, and communicated by the Director of Public Instruction, Andhra Pradesh, in Rc.No.4-S2/65, dated 11.08.1970.

5. The official respondents have filed their reply statement in OA.No.355/2017 and O.A.No. 612/2017. From the reply statement filed, it is seen that there is no dispute about the facts of the case. They, however, contend that conferment of degrees by

Distance Education Mode by the Universities and the requirement of adherence to UGC guidelines by the Universities while offering courses was considered by the Hon'ble Supreme Court in ***Annamalai University rep., by Registrar v. Secretary to Government, Information & Tourism Department & Others*** (2009) 4 SCC 590). In the said case, a similar issue was considered regarding the eligibility of an official who obtained a Post Graduate degree from Annamalai University without Graduation for promotion to the post of Principal in Film and Television Institute wherein the prescribed qualification was a degree in Science or Arts from any University. After considering the various provisions of the relevant regulations/acts, the Hon'ble Supreme Court held that Post Graduation without a basic degree cannot be taken as eligibility for the purpose of promotion and accordingly, rejected the appeal filed by the Annamalai University. Hence, the applicants who have acquired Post Graduation from Madurai Kamaraj University without a basic degree as per the Recruitment Rules is not entitled to the relief sought for in the OA. They also point out that the permission granted to the applicant to pursue M.Com in Madurai Kamaraj University by distance education mode has no relevance to the process of selection of JAOs. Further, the clarification of the Government of Tamil Nadu is in regard to a question as to whether a person who obtained a B.A/B.Sc degree through Open University without a pass in the Higher Secondary Examination (+2) shall be considered as having passed the higher secondary examination in respect of a post for which the minimum educational qualification fixed is a pass in Higher Secondary Education (O.A.No.355/2017). The said clarification will in no way help the applicant as the decision given is that a degree after Secondary School Examination alone can be considered. In fact, the order of the Tamilnadu Government only reinforces that without a basic qualification, degree/diplomas obtained are not valid. Thus, the applicants who have obtained Post Graduate degree without undergoing Graduation will not fulfill the requirement of the Recruitment Rules.

6. Heard Dr.Raghu Kumar, learned counsel for the Applicant in O.A.No.355/2017 and O.A.No.910/2017, Mr.K.Venkateswara Rao, learned counsel for the Applicant in O.A.No.612/2017, and Mr.M.C.Jacob, Mrs.A.P.Lakshmi and Mrs.K.Rajitha, learned Standing Counsel for the Respondents.

7. The learned counsel for the Applicants relied on the judgment of the Hon'ble Apex Court in Chandrakala Trivedi v. State of Rajasthan in Civil Appeal No.400/2012, in which the Hon'ble Supreme Court had set aside the order of the High Court of Rajasthan, which had given a finding that a higher qualification is not a substitute for the basic qualification for the post of Teacher. The Hon'ble Apex Court concluded that the provisional appointment given to the applicant to the post of Teacher in Primary and Upper Primary School should not be cancelled. Dr.A.Raghu Kumar, the learned counsel also placed reliance on the orders of the Hon'ble High Court of Kerala, which considered a similar issue in W.P.(C).No.18502/2011 dated 12.3.2012. He argued that the petitioner in the said case had acquired a M.A. Degree in History from the University of Mysore through a correspondence course of study without obtaining a Bachelor's Degree. Since the petitioner had been granted a MA Degree even though he did not possess a Bachelor's Degree, doubts were raised regarding the genuineness of his qualification. After considering the entire facts of the case, the Hon'ble High Court held as follows:

“11. It has been held by a Division Bench of this Court that Degrees and Diplomas awarded by the statutory Universities established by the Central or State Legislature have to be recognized, without maintaining any differentiation as to whether they were obtained by undergoing a regular course of study or a correspondence course. The dictum in State of Kerala V. Thulasibai (2011 (3) KHC 65 (DB)) is therefore squarely

applicable to the facts of this case. For the above reasons, the impugned order Ext.P28 is unsustainable and is liable to be set aside. I do so.”

He also cited the judgment of the Principal Bench of the Central Administrative Tribunal at Delhi in O.A.No.2692/2006, dated 4.2.2009, in which the Tribunal had categorically held that there was no justification, reasonableness or rationale to cancel the candidature of the applicant therein and declare him as ineligible.

8. Per contra, Mr.M.C.Jacob, the learned counsel for the Respondents, invited our attention to the judgment of the Hon'ble Apex Court in Annamalai University v. Secretary to Government, Information & Tourism, Department & Others (2009 (4) SCC 590), in which the Hon'ble Apex Court had categorically held that a Master's degree awarded in violation of Regn.2 of UGC Regulations of 1985 by a university under Open University System (OUS) without acquiring three years' graduate degree is void. He also pointed out that the Hon'ble Apex Court had held that UGC Act would prevail on the Open University. The relevant paras are extracted hereunder:

“29. In disputably, UGC in exercise of the powers conferred upon it by clause (f) of sub-section (1) of Section 26 of the UGC Act, made the 1985 Regulations. A Notification in this behalf was published by UGC on 25.11.1985. It, however, was given effect from 1.1.1986. We may notice some of the provisions of the 1985 Regulations.

“2. Admission/students.- (1) No student shall be eligible for admission to the first degree course through non-formal/distance education unless he has successfully completed 12 years' schooling through an examination conducted by a board/university. In case there is no previous academic record,

he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.

2. *No student shall be eligible for the award of the first degree unless he has successfully completed a three-year course; this degree may be called the B.A/B.Sc/B.Com (general/honours/special) degree as the case may be;*

Provided that no student shall be eligible to seek admission to the Masters course in these faculties, who has not successfully pursued the first degree course of three years' duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three-year degree course, they may award a B.A/B.Sc/B.Com (pass) degree on successful completion of two year course., but that no student of this stream shall be eligible for admission to the Masters course unless he has undergone a further one-year bridge course and passed the same. The three-year degree course after 10+2 stage should in no case be termed as B.A/B.Sc/B.Com (Pass) degree.

35. UGC in its letter No.F.1-75/91 (CPP), dated 30.12.1991 to the Registrars of various universities regarding application of the UGC Regulations, 1985, informed them that for admitting candidates in courses for which the first degree was the minimum qualification, the universities may not insist upon the three years duration for the first degree course in respect of candidates who had obtained their first degree prior to 1985.

36. Thereafter, UGC, vide its DO letter No.F11-4/92 (CPP-II) dated 24.4.1996 informed the universities of its decision regarding the validity of one year degree course (one sitting) equivalent to three years' regular course of the first degree. The Commission communicated its decision on the said matter:

“1. According to the UGC Regulations of minimum standards, both formal and non-formal degree courses must be of three years duration.

2. *The undergraduate programme has been generally accepted as a three years' programme in most of the universities. However, it was noted that in some States, the universities offer a two-year degree course after 10+2. However, such students are not eligible for admission to the Masters degree programme.*
3. *It was desired that the UGC Regulations of minimum standards for formal as well as non-formal education be circulated to the universities for compliance.*
4. *It was decided that the requirement for a three years' degree course should also be notified.*
5. *No private candidate should be permitted to appear for an examination."*

It, in the said letter, also asked the universities to ensure that the abovementioned decisions be scrupulously followed by them.

37. In continuation of the said office letter, the UGC, thereafter, vide Letter No.F.11-4/92 (CPP-II) dated 14.3.1997 informed the Vice Chancellors of the universities as under:

"The degrees of the candidates enrolled for the one-time Bachelor's degree programme, up to the year 1995-1996 may be treated as valid. The degree of the candidates declared valid may be treated on a par with other degrees of the same university for all purposes including admission to higher degrees and employment."

38. Thereafter considering the request and representations received from several candidates regarding the validity of MA/M.Sc/M.Com degree (one sitting), UGC vide its Letter No.F.1-30/96 (CPP-I), dtd 1.2.1998 informed the Registrars of various universities that:

"No university may be allowed to enroll candidates for one sitting of MA/M.Sc.M.Com from the academic year beginning in 1998 onwards and the students already registered may be allowed to complete their course by 30.6.1999, and the degree awarded to these candidates up to the period may be treated as valid."

UGC despite requests and representations received from various persons reiterated its earlier decision regarding the validity of MA/MSc/MCom degree (one sitting) in its Letter No.F.1-30/96 (CPP-II), dated 23.7.1998 to the Registrars of the universities.

40. *The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in class rooms. Combination of subjects are also inflexible.*
41. *Was the alternative system envisaged under its Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.*

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26 (1) (f) and 26 (1) (g) are very broad in nature. Subordinate legislation as is well known

when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

9. We have considered the rival contentions and also perused the record.

10. The short point for consideration in this OA is whether the applicants, who acquired a Post Graduation Degree after 10 + 2 without a Graduation Degree can be considered as having met the eligibility criteria for appearing in LICE for promotion to the post of JAO.

11. From the material that has been placed before us, we find that this issue has arisen for consideration on many occasions earlier and that basing on the judgment in Annamalai University's case, the matter is no more res integra.

12. Admittedly, the applicants have acquired PG degree through Distance Education mode without a Graduate Degree after 30.6.1999, and after UGC had informed the Universities that no candidate should be enrolled for one sitting of M.A/M.Sc/M.Com degree from the academic year beginning in 1998 onwards. The Apex Court has also unequivocally held that the UGC Act applies and is binding on all Universities including Open Universities. In terms of the aforesaid judgment, the Post Graduate degrees of the applicants are held to be invalid for the purpose of promotion.

13. It was brought to our notice that the BSNL had again addressed the UGC on 01.11.2016 seeking a clarification regarding the validity of the Post Graduate Degree obtained by the applicants with 10+2 qualification through Distance Education without completing the 3 year degree course. The respondents have also produced the UGC notification No.F-5/1/2013/CPP-II) dated March 2014, which had given the minimum entry qualification and duration of programmes in a tabular form. As per this notification, it has been made clear that for a M.A/M.Com degree, the entry qualification is a Bachelor's degree. Since the requirement as per the notification for LICE was a Bachelor's degree, the Post Graduate Degree acquired without the entry qualification of a Bachelors degree cannot be considered to be adequate for the purpose of promotion as JAO.

14. Our attention was also drawn to a similar matter, which was adjudicated by the Coordinate Bench of this Tribunal at Ernakulam in OA.No.1032/2012. In this OA also, the issue as to whether possessing a Post Graduate Degree through Open University System without obtaining a Degree was considered. The OA was dismissed in the light of the judgment rendered by the Hon'ble Apex Court in Annamalai University's case.

15. In this context, we have carefully considered the judgment of the Hon'ble Supreme Court in Chandrakala Trivedi v. State of Rajasthan in which the Apex Court had set aside the order of the Single Judge and Division Bench of the High Court of Rajasthan which had held that Ms.Chandrakala Trivedi was not eligible for the post of Teacher as she had not passed the Senior Secondary Examination which is the basic qualification for the post. The Hon'ble Supreme Court held as follows:

“We fail to appreciate the aforesaid view taken by the High Court. We find that from the qualifications which have been mentioned, it is made clear that the basic qualification is Senior Secondary or Intermediate or its equivalent. We find that the appellant on the basis of her qualification was provisionally selected after she had submitted her requisite testimonials.

In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary examination even in respect of a candidate who was provisionally selected. The word 'equivalent' must be given a reasonable meaning. By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence.

Considering these aspects of the matter, we are of the view that the appellant should be considered reasonably and the provisional appointment which was given to her should not be cancelled. We order accordingly.

However, we make it clear that we are passing this order taking in our view the special facts and circumstances of the case.”

16. A plain reading shows that the main consideration which weighed with the Hon'ble Apex Court is that the qualifications as per the Recruitment Rules for the post

in question was Senior Secondary or Intermediate or its equivalent. In the instant case, the Rules have not permitted any equivalent degree to the basic qualification. Further, the Hon'ble Apex Court had made it clear that the order was passed taking into consideration the special facts and circumstances of that case. Thus, the order in Chandrakala Trivedi's case is distinguishable on facts. Further, this is a case of promotion and not a fresh recruitment and would be covered by the following observation of the Apex Court in Annamalai University:

“It is a case of promotion. It is not a case of fresh entry in services. Our judgment would not affect the service of the appellant Ramesh. He cannot only be promoted to the post of Principal of the Institute.”

17. With regard to the contention of the applicant in O.A.No.355/2017 that he acquired the Madhyama Visharadh which is equivalent to Bachelor of Arts, we are in agreement with the respondents that as per G.O.Ms.No.1415, dated 22.07.1970, it has been clarified that the said recognition to the Madhyama Visharad Course conducted by Hindi Sahitya Sammelan, Allahabad, is only in regard to the standard of Hindi prescribed in the equivalent Hindi examination and is not to be treated as equivalent to the full fledged certificate or degree of the examination to which it has been equated. It is also pertinent to observe that after the formation of the University Grants Commission by a Central Act to regulate higher education in the country, a three year course is the requirement for conferment of a graduation degree.

18. In view of the dictum laid down by the Hon'ble Apex Court in Annamalai University case, the Post Graduate degrees acquired by the applicants without a basic degree cannot be considered as having met the eligibility criteria stipulated in the notification.

19. We, therefore, hold that the OAs are devoid of merit. Accordingly, the OAs are dismissed with no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 5th day of January, 2018

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