

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Transferred Application No.119/2009

Jabalpur, this Friday, the 31st day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Scheduled Caste/Scheduled Tribe Employee Welfare Association of BSNL, Chhattisgarh Telecom Circle, Raipur (C.G.)-Through its Circle Secretary, Ashok Singh, S/o Shri Shiv Kumar, Aged about 39 years, R/o Laxminagar, Ekta Chowk, Behind Marble Line, Raipur (C.G.)

2. Ashok Singh S/o Shri Shiv Kumar, Aged about 39 years, Circle Secretary, Scheduled Caste/Scheduled Tribe, Employee Welfare Association of BSNL, Chhattisgarh Telecom Circle, Raipur (C.G.), R/o Laxminagar Ekta Chowk, Behind Marble Line, Raipur (CG)

3. S.K.Wagmare, S/o Late Shri C.L. Wagmare, Aged about 54 years, Member Scheduled Caste/Scheduled Tribe Employee Welfare Association of BSNL, Chhattisgarh Telecom Circle, Raipur (C.G.), R/o Transmission building CTO Compound, Jabalpur (MP)

-Applicants

(By Advocate –Shri A.P.Shroti)

V e r s u s

1. Union of India, through the Secretary,
Department of Telecommunication Sanchar Bhavan,
20 Ashok Road, New Delhi 110001

2.Bharat Sanchar Nigam Ltd.(A Government of India Enterprise), Through Chairman & Managing Director, Corporate Office at Harishchandra Mathur Lane, New Delhi 110001

3. Chief General manager, Telecommunications, BSNL, Chhattisgarh Telecom Circle, Raipur (CG)

-Respondents

(By Advocate –Shri Sajid Akhtar)

(Date of reserving the order:31.07.2018)

ORDER

By Navin Tandon, AM:-

The applicants are aggrieved that 19 members of the Association (Applicant No.1) have not been granted proper seniority, even though they have passed the qualifying-cum-competitive examination in year 2000.

2. The applicants had approached Hon'ble High Court of Chhattisgarh in WP(S) 5296/08. It was notified by DoPT on 31.10.2008 that the provision of sub-section 3 of section 14 of the Administrative Tribunal Act, 1985 are applicable to Bharat Sanchar Nigam Limited (BSNL). Thus, it was ordered by Hon'ble High Court on 12.05.2009 to transfer the case to this Tribunal Circuit Bench at Bilaspur (CG). It was registered as Transferred Application (T.A.) 119/2009 on 30.06.2009.

3. During the intervening years, the case saw more heat than light with accusations, counter accusations, demand for production of original answer sheets, filing of affidavits/ additional documents, transferring the case between Bilaspur and Jabalpur, approaching the Hon'ble High Court and last, but not the least, repeated adjournments sought by both the parties.

4. The Writ Petition was filed by applicant No. 1 & 2. This Tribunal ordered on 28.06.2016 as under:

“As per Ruled 4(5)(b) the Central Administrative Tribunal (Procedure) Rules, 1987 that at least one affected person should be made party when an association is filing a case. Learned counsel for the applicant brought to out notice that the Secretary himself is also an affected person and he is applicant No.2.

For the betterment of things, we appreciate if any other person who is a member of Union is made as party applicant in this case.”

Accordingly name of applicant No. 3 was added in the cause title.

5. During the final hearing stage, it came to our notice that no resolution has filed by the applicant No.1 and 2 as required in Para 7 of The Central Administrative Tribunal, Rules of Practice, 1993 which reads as under:

“(7). Production of authorization for and on behalf of an Association:-

Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce along with such application, etc. for verification by the Registry, a true copy of the resolution of the Association empowering such person (s) to do so:

Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization.”

It has been submitted in Para 8.2 that “petitioner No. 2 is the secretary of petitioner No. 1 and authorized to file the present petition.” Since, this case was already delayed, in the

interest of justice, we decided to go ahead with adjudication, considering the statement made in Para 8.2 of the T.A.

6. The background of the case is that the respondent Department of Telecommunications (for short DoT) notified on 06.11.1998 (Annexure P-1) holding of Departmental Qualifying-cum-Competitive Examination for promotion to Telecom Engineering Service (Group 'B' Posts), which was in compliance of the judgment dated 25.10.1996 of Hon'ble Supreme Court and pursuance of order dated 01.05.1998 of Coordinate Bench of this Tribunal at Ernakulam to fill up the vacancies arising prior to 23.07.1996.

6.1 The examination was held in the month of November 2000, in which SC/ST candidates were allowed to appear in both qualifying and competitive part and other category (OC) candidates, who have already qualified in the Qualifying Examination were allowed to appear in the competitive part of the examination because only backlog vacancies for SC/ST in qualifying quota were available at that time.

6.2 Ernakulam Bench of this Tribunal in its order dated 22.05.2001 directed the Department to conduct a special Supplementary Departmental Qualifying-cum-Competitive Examination in continuation of one already held in November

2000. This decision was upheld by Hon'ble High Court of Kerala. This examination was notified by Bharat Sanchar Nigam Limited (BSNL) on 17.04.2003 (Annexure P-6).

7. In the instant Transferred Application (for short T.A.) the Association (Applicant No. 1) is pressing the cause of 19 Members of the Association (**hereinafter referred to as the applicants**) working in the cadre of Telecom Engineering Service (Group 'B'). Their details are furnished in Para 8.3 of the T.A. All of them belong to SC and ST category.

8. The following submissions have been made in the T.A.

8.1 The result of the departmental qualifying Exam held on 25/26.11.2000 was declared on 13.09.2001 (Annexure P-2).

8.2 The list of 45 SC/ST candidates who passed both qualifying and competitive examination was never communicated. The applicants cleared both competitive and qualifying examination and were promoted to cadre TES (Group 'B') vide order dated 19.03.2002 (Annexure P-3).

8.3 Applicant No. 2 sought information from the respondent department under Right to Information Act regarding result of 45 SC & ST candidates, which include the present applicants, who appeared in qualifying-cum-competitive examination in the year 2000.

8.4 BSNL vide their letter dated 23.11.2007 (Annexure P-5) communicated in Para 3 that in the examination conducted in the year 2000, 295 SC/ST candidates were declared successful in the qualifying part whereas 45 candidates were declared successful in the competitive part. Further in Para 10.2 of the same communication it was mentioned that the details of marks obtained by 44 (nee 45) candidates is not available with Personnel II section, as it is available with the examination section of BSNL.

8.5 The DoT notified the seniority list of 295 candidates who passed only qualifying examination on 27.01.2003 (Annexure P-7). The names of the applicants were included therein.

8.6 The respondent department issued provisional, final, revised and re-revised seniority list of 147 officers who were successful in the Departmental qualifying-cum-competitive examination held in the year 2000 and supplementary examination held in the year 2003 on 13.10.2006 (Annexure P-8), 13.02.2007 (Annexure P-9), 27.03.2008 (Annexure P-10) and 28.07.2008 (Annexure P-12) respectively. The names of the applicants did not feature in any of the above lists.

8.7 The applicants have submitted several representations but to no avail.

9. The applicants have sought for the following reliefs in this T.A.

“10. Relief Sought:-

(10.1) That, the Hon’ble Court may be pleased to direct the respondents to grant seniority to the aggrieved members of Petitioner Association having passed the qualifying-cum-Competitive examination in the year 2000 and promoted to the post of TES Group B vide office letter dated 19.3.02.

(10.2) That, the Hon’ble Court may be pleased call the entire records of seniority list issued on 13.10.06, 01.02.07, 27.03.08 and 28.07.08, by the respondents.

(10.3) That the Hon’ble Court may be pleased to direct the respondent, to consider the aggrieved member of the Petitioner Association for the promotion to the post of Executive, (STS) Group A, over and above the candidates who have passed qualifying cum competitive Exams in year 2003.

(10.4) Any other relief(s) may also be given to the petitioner, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

10. The respondents have submitted that none of the applicants was declared successful in the competitive part of the examination. The seniority of the applicants has been fixed as per rules correctly.

10.1 The respondents have further contended that in Para 3 of the information given under RTI (Annexure P-5) it was inadvertently mentioned that 44 (to be read as 45) officers had passed in both the qualifying and competitive examination held

in the year 200/2003 whereas in fact, these officers only passed in qualifying part of the Departmental qualifying-cum-competitive examination held in the year 2000/2003.

10.2 It has further been submitted by the respondents that in order to set the records straight, a revised reply has since been issued to RTI Cell by UO No. 29-37/2007-Pers-II dated 28.11.2008 for onward transmission to Shri Ashok Singh, the petitioner no. 2 herein.

11. The applicants prayed for production of the answer sheets of the applicants in the Court, which was allowed by this Tribunal on 06.04.2010. However, BSNL in their reply dated 12.12.2012 have submitted that the answer sheet have been weeded out as per the instant instructions to destroy the same after one year of the declaration of the result.

11.1 Subsequently, on the direction of this Tribunal on 17.01.2017, the BSNL has filed the marks tabulated sheet of all the participants on 30.01.2018 vide M.A. No. 200/00113/2018.

12. Heard the arguments of both the parties and perused the documents produced before us.

13. Learned counsel for the applicants raised the objection regarding information provided under RTI Act being corrected. He placed reliance on **Patel Narshi Thakershi and others vs.**

Shri Pradyumansinghji Arjunsinghji, 1971 (3) SCC 844

wherein Para 4 reads as under:-

“(4). The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was Liable to be set aside.”

13.1 He emphasized on the point that the power to review is not an inherent power as held by Hon’ble Supreme Court in the above referred case.

13.2 He argued that since RTI Act does not provide any power to review the information provided, the action of the respondents in correcting the information provided is legally not tenable.

14. When the question was raised to the learned counsel for the applicants that should the applicants be promoted only on the basis of wrong information furnished in the information provided under RTI Act, he fairly agreed that it is not possible.

15. Subsequent to furnishing of the tabulated marks statement on 30.01.2018 vide M.A. No. 200/00113/2018 no further response have been filed by the applicants.

16. The Officials of the BSNL present in the Court submitted that a perusal of the marks of all the applicants indicates that they have not obtained the required 45% marks (for SC/ST candidates) in each paper for the limited competitive examination, as prescribed in the notification (Annexure P-1).

16.1 A sample check was done in the Court and the statement of the BSNL official was found to be correct.

17. After submission of the tabulated marks obtained by all the candidates in the Court, which has not been challenged by the applicants, it has become clear that the applicants were not successful in the competitive examination.

18. Accordingly, Transferred Application is dismissed being devoid of any merit. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member