

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00898/2015

Thursday, this the 28th day of March, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

K.T. Rajesh, aged 43 years, S/o. V.P. Ramachandran,
 Telecom Technical Assistant, Office of the Sub Divisional Engineer
 (Groups), Bharat Sanchar Nigam Limited, Pattambi, Pin-679 303,
 Residing at Pushpa Nivas, Sangaramangalam PO,
 Pattambi – 679303. **Applicant**

(By Advocate : Mr. T.A. Rajan)

V e r s u s

1. Bharat Sanchar Nigam Ltd., Represented by its Chairman, A 703,
 Statesman House, B-148, Barakhamba Road, New Delhi – 110 001.
2. The Director (Human Resources Development),
 Bharat Sanchar Nigam Ltd., Corporate Office,
 5th Floor, Bharat Sanchar Bhavan, Janapath, New Delhi – 110 001.
3. The Chief General Manager, Telecom, Bharat Sanchar Nigam Ltd.,
 Kerala Circle, Thiruvananthapuram – 695 033.
4. The General Manager, Telecom, Bharat Sanchar Nigam Ltd.,
 Palakkad – 678 014. **Respondents**

(By Advocate : Mr. George Kuruvilla)

This application having been heard on 18.03.2019, the Tribunal on
 28.03.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

“I) Call for the records leading to Annexure A11 Recruitment Rules and declare that the non inclusion of the applicant and similar others in the feeder categories for promotion to the post of Junior Telecom Officer

(Telecom) as illegal.

II) Direct the respondents to include the applicant and similar others in the feeder categories for promotion to the post of Junior Telecom Officer (Telecom).

III) In alternative direct the respondents to permit the applicant and similar others to appear in three successive LICE for promotion to the post of Junior Telecom Officer (Telecom) just like the candidates possessing Diploma/Degree in Mechanical Engineering.

IV) Award costs of and incidental to this application.

V) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicant is now working as Telecom Technical Assistant in the office of the Sub Divisional Engineer (Group), Pattambi. He is aggrieved by the Recruitment Rules of Junior Telecom Officer (Telecom), 2014 to the extent it excludes the applicant and similar others for promotion to the post of Junior Telecom Officer (Telecom). Applicant commenced his service as Telecom Office Assistant in the Department of Telecommunication at Palakkad on 13.9.1994. In December, 1997 the post of Telecom Office Assistant was restructured as Senior Telecom Office Assistant. Applicant was promoted to the post of Telecom Technical Assistant vide order Annexure A4. The next promotion post of the applicant is Junior Telecom Officer (Telecom). As per the Junior Telecom Officers Recruitment Rules, 1990 (Annexure A5), 65% of the post of JTO are to be filled up by direct recruitment through a competitive examination in accordance with the instruction issued by the Department in this behalf and 35% by promotion of departmental candidate through competitive/qualifying examination as indicated in column 12 of the schedule. Annexure A5 was amended by Junior Telecom Officer

Recruitment Rules, 1996 (Annexure A6). As per the said RR 50% of the post of Junior Telecom Officers are to be filled up by direct recruitment and 50% by promotion/transfer as indicated under column 12 of the schedule. The applicant was then working as Telecom Office Assistant and was eligible to participate in the selection for promotion to the post of Junior Telecom Officer under 15% quota of Annexure A6. However, Annexure A6 RR was further amended by Junior Telecom Officer Recruitment Rules, 1999 (Annexure A7). Later Annexure A7 was further amended by Junior Telecom Officer Recruitment Rules, 2001 (Annexure A8). Vide Annexure A8 applicant and similar others were excluded from participating the LDCE for promotion to the post of Junior Telecom Officer (Telecom) by incorporating higher qualifications in it. By notification dated 1.3.2013 a selection was initiated for promotion to the post of Junior Telecom Officer (Telecom). The applicant also applied for the said post. However, he was not permitted to participate in the selection. Aggrieved the applicant filed OA No. 487 of 2013. The said OA was closed directing the respondents to intimate their decision on the application of the applicant before 2.6.2013 the scheduled date of examination. However, no decision was communicated to the applicant till now. In the meanwhile he came to know that he was not allowed to participate in the selection due to lack of qualification stated in Annexure A8. Further in supersession of Annexure A8 Recruitment Rules, the 1st respondent issued Recruitment Rules of Junior Telecom Officer (Telecom), 2014 (Annexure A11). The grievance of the applicant and similar others were not redressed in Annexure A11 and instead the candidate possessing degree/diploma in Mechanical Engineering

who were not included in Annexure A8 Recruitment Rules, are now permitted to appear in three successive departmental examinations. The denial of the same benefit to the applicant and similar others is arbitrary, unjust, illegal and also amount to discriminatory. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri George Kuruvilla and filed a detailed reply statement contending that after the formation of the BSNL on 1.10.2000, JTO Recruitment Rules of 2001 was formulated and became operational with effect from 26.9.2001. Subsequently, the competent authority has reduced the eligible service to 7 years based on the request made by the unions and the competent authority is empowered to do so. The LICE for promotion to the cadre of JTO held on 2.6.2013 was conducted as per the JTO Recruitment Rules, 2001. Since the qualification of the applicant was B.Sc. Maths with Statistics and Mathematical Economics, he is not eligible for appearing in the said LICE as per the JTO Recruitment Rules, 2001. The applicant with his present educational qualification was eligible to participate in the selection process conducted as per the Recruitment Rules, 1996 and 1999. By the formation of 2001 Recruitment Rules which prescribes a higher educational qualification for promotion, the applicant became ineligible to apply. The eligibility of a candidate for a particular examination is dependent on the Recruitment Rule prevailing at that time and also the notification for the examination. Respondents pray for dismissing the OA.

4. Heard Shri T.A. Rajan, learned counsel for the applicant and Shri George Kuruvilla, learned Standing Counsel for the respondents. Perused the records.

5. The BSNL after its formation on 1.10.2000, formulated JTO Recruitment Rules, 2001 which became operational with effect from 26.9.2001. As per the schedule, the quota for direct recruitment is 50% and remaining 50% is through Limited Internal Competitive Examination from amongst eligible internal candidates. As per the JTO, Recruitment Rules, 2001 the following was the eligibility criteria:

“I) 35% by promotion through limited internal competitive examination from the following Group C employees below 50 years of age as on the date of such examination, of the Engineering Wing namely : Phone Inspector / Auto Exchange Assistants / Wireless Operators / Transmission Assistants / Telecom Technical Assistants / Sr. Telecom Office Assistants and possessing the following essential qualifications and experience.

A) Bachelor of Engineering/bachelor of Technology or equivalent Engineering Degree in any of the disciplines viz. Telecommunications / Electronics / Electrical / Radio / Computer **or** Bachelor of Science with Physics and Mathematics **or** 3 years diploma in Telecom / Electronics / Radio / Computer **and**

B) 10 years regular service in post Group C.

II) 15% by promotion through limited internal competitive examination from amongst the following Group C employees of Telecom Engineering

i) Working in Telecom Engineering Branch including office of Chief General Manager, Telecom Circle/district other than Plumber/Sanitary Inspectors/conservancy.

ii) Working in Telecommunication Factory, other than those borne on Industrial Establishments.

iii) Borne on the regular establishment and working as works clerks Grade I and II, Work Assistants, Draftsman, Junior Architects and Electricians in the Civil Wing under Telecom Circles and possessing the following educational qualifications, namely:

3 years Diploma in Telecom/Electrical/Radio/Computer engineering and 10 years service in post in Group C.

The employees eligible to take up competitive examination under 35% Limited Internal Competitive Examination quota shall not be eligible for appearing at the competitive examination under 15% limited internal competitive examination quota.”

6. The qualification of the applicant is BSc. Maths with Statistics and Mathematical Economics which is not a qualification for becoming eligible for appearing in the said LICE as per JTO Recruitment Rules, 2001. Therefore, the applicant was not allowed by the respondents to appearing in the LICE. Further we find that the contention of the applicant that denial of inclusion of B.Sc. Maths with Statistics and Mathematical economics is arbitrary, illegal and unjust is denied by the respondents stating that the Board prescribes the necessary educational qualification after taking into account various aspects to meet the organizational requirement and to compete with other private service provides with improvised and skilled manpower. Moreover, the applicant with his present educational qualification was eligible to participate in the selection process conducted as per the Recruitment Rules, 1996 and 1999. The respondents contended that the Recruitment Rules are framed with an object to improve the quality of manpower to be used in the exchanges in the light of the change in the technology of telephone exchanges. The telecom technology is changing very fast and hence suitably qualified persons can only handle such technology. Therefore, necessary changes were made by the competent authority of the BNSL in the Recruitment Rules, 2001 to improve the quality of man power of the organization.

7. The Hon'ble apex court in ***Chandigarh Administration through Director Public Instructions (College), Chandigarh v. Usha Khetrapal & Ors.*** - 2011 (9) SCC 645 held as under:

“It is now settled that it is for the rule making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Court and Tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provisions of the Constitution.”

Further in ***Union of India v. Pushpa Rani & Ors.*** - (2008) 9 SCC 242 the Hon'ble apex court held that the matter relating to creation/abolition of posts, formation/restructuring of cadres, sources/mode of recruitment, prescription of qualifications, selection criteria, evaluation of service records, are matters which fall in employer's domain. Judicial review comes into play only if State action is contrary to constitutional or statutory provisions, or is patently arbitrary or vitiated by malafides. In ***Deepak Agarwal & Anr. v. State of Uttar Pradesh & Ors.*** - (2011) 6 SCC 725 the Hon'ble apex court held that appellants did not have any accrued or vested right for promotion which was taken away by the amendment. It is rules which are prevalent at the time when consideration takes place for promotion, which would be applicable.

8. In the view of the facts and circumstances of the case as well as the legal position on the subject, we do not find any merit in the Original Application. Accordingly, the Original Application is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00898/2015

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the appointment order of the applicant memo No. Q-1299/18 dated 2.11/12.94.

Annexure A2 – True copy of the degree certificate of the applicant.

Annexure A3 – True copy of the MBA certificate of the applicant.

Annexure A4 – True copy of the order No. ST III/TTA/LDCE 40%/2008/55 dated 21.3.2011 of the 4th respondent.

Annexure A5 – True copy of the Recruitment Rules, 1990 dated 15.6.1990 of the Bharat Sanchar Nigam Ltd.

Annexure A6 – True copy of the Recruitment Rules, 1996 of the Bharat Sanchar Nigam Ltd.

Annexure A7 – True copy of the Recruitment Rules, 1999 Bharat Sanchar Nigam Ltd.

Annexure A8 – True copy of the Recruitment Rules, 2001 of the Bharat Sanchar Nigam Ltd.

Annexure A9 – True copy of the order dated 28.5.2013 in OA No. 487 of 2013 of this Hon'ble Tribunal.

Annexure A10 – True copy of the representation dated 10.6.2013 submitted by the applicant.

Annexure A11 – True copy of the Recruitment Rules of Junior Telecom Officer (Telecom) 2014 dated 14.10.2015 of the Bharat Sanchar Nigam Ltd.

Annexure A12 – True copy of the list of officiating Junior Telecom Officer and qualification as on 1.10.2015 issued by the Sub Divisional Engineer (Admn.), Office of the 4th respondent.

Annexure A13 – True copy of the order bearing No. ES/22-2/2017-2018/138 dated 10.4.2018 of the Assistant General Manager (R&E), Thiruvananthapuram.

RESPONDENTS' ANNEXURES

Annexure R1(a)— True copy of the letter dated 1.8.2013 issued to the applicant.

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