

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00477/15

Reserved on: 03.04.2019
Pronounced on: 05.04.2019

CORAM

**HON'BLE MR. JAYESH V. BHARAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Asrar- Ul-Haque, S/o Mateenul Haque, resident of Khanquah Emdia, PS- Chowk Patna City, Mangal Talab, Patna City.
2. Vijay Bhaskar Prasad, S/o Sri Nand Kishore Prasad, Nand Kishore Sadan, New Patna Colony, Beur, Patna.
3. Sanjeev Kumar, S/o Late Mahendra Prasad Singh, Ram Briksh Bhawan, Pustakalaya Lane, East Lohanipur, Kadam Kuan, Patna.
4. Mukesh Prasad, S/o Sri Balram Mahto, Telephone Quarter, Pipalpanti Road, Munger.
5. Sanjay Kumar, S/o Late Lalji Prasad, At- Ram Nagar Colony, Shastri Nagar, Jail Road, PS- Rampur, District- Gaya.
6. Raj Mohan Sah, S/o Sri Bishwanath Sah, Vill & PO- Barka Gaon, PS- Pakri Dayal, District- East Champaran.

.... Applicants.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India, through the Secretary, DoT, Ministry of Communication & Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi-1.
2. The CMD, BSNL, Bharat Sanchar Bhawan, Janpath, New Delhi-1.
3. The Asstt. Director General (DE-II), BSNL (Corporate Office-Departmental Examination Branch), New Delhi.
4. The Asstt. General Manager (Pers.-II), Bharat Sanchar Nigam Limited, Corporate Office, Personnel-II Section, Bharat Sanchar Bhawan, 4th Floor, Janpath, New Delhi.
5. The C.G.M.T., Bihar Telecom Circle, Sanchar Sadan, Patna-1.
6. The Asstt. General Manager (Estt.), BSNL, O/o CGMT, Bihar Circle, Patna.

.... Respondents.

By Advocate: - Mr. Rohit Mishra for R-2 to R-6.

ORDER

Per Dinesh Sharma, A.M:- The case of the applicants is that Limited Internal Competitive Examination (LICE) from amongst Stenos were announced for their promotion to the post of Personal Assistants vide letter dated 17.05.207 of AGM (Estt.), Office of the CGMT, Bihar Circle, Patna . The applicants appeared in the written test (part A of the examination) held on 05.08.2007. However, the second part of the examination was delayed because of pendency of cases before various courts (not initiated by the applicants) and the second part was finally held on 11.01.2015. The candidates were finally ordered their promotion to the grade of Personal Assistant on the basis of examination held on 05.08.2007 and 10.01.2015 by order dated 13.04.2015. The claim of the applicants is that the delay in holding of the second part of the examination was for no fault of theirs. Therefore, following the decisions of CAT, Bangalore in OA 181/2009 dated 26.04.2010 (which was based on various decisions of the Apex Court) and also in pursuance of the law laid down by the Apex Court in the case of N.R. Parmar, their promotions to the grade of Personal Assistant should be made effective from the vacancy year 2006/recruitment year 2007. The applicants had earlier approached this Tribunal by OA No. 64/2013 which was allowed and the respondents were directed to proceed with the examination by its order dated 30.05.2013. The respondents filed a CWJC No. 10720 of 2014 challenging this decision of the Tribunal which was also dismissed by the Hon'ble High Court of Patna.

2. The respondents have filed their written statement denying the claim of the applicants. According to them the promotion from Steno to P.A. is not a regular /time bound promotion and therefore the applicants cannot claim a right for promotion before they become entitled/eligible for same said promotion. Though the first part of the examination was conducted on 05.08.2007, one Shri Akhilesh Kumar, who was not considered eligible for appearing in this exam, moved to the Hon'ble High Court by filing a writ petition vide CWJC No. 11134 of 2007. The Hon'ble High Court by their order dated 09.10.2009, ordered to hold a special examination for the petitioner in that writ. The BSNL (respondents) filed an SLP before the Hon'ble Supreme Court and this SLP was dismissed by the Hon'ble Supreme Court vide order dated 27.08.2015. Following this, special examination was organized to be held for Shri Akhilesh Kumar besides organizing the second part of the examination for the six candidates who had already qualified the written examination held on 05.08.2007. Thus, the process of Limited Internal Competitive Examination attained finality only in the year 2015. The applicants were working as Steno during this period and hence the financial benefit applicable to the post of Personal Assistant cannot be granted to them. The respondents have denied the claim of the applicants for promotion with effect from a past date, since they have taken charge of the post of PA only in the year 2015 and the benefit of promotion can be granted only from a prospective date.

3. The applicants have filed a supplementary application on 28.02.2019 stating that the grievance of applicants no. 1,2,5 & 6 has been

redressed as they have been allowed promotion on the basis of DPC from previous years. Their prayer is now limited to directing the respondents to pass corrective orders allowing notional promotion to applicant no. 3 and 4 from the date of vacancies of 2006 in terms of decision of Hon'ble Supreme Court in the case of N.R. Parmar. A reply was filed to this supplementary application by the respondents clarifying that the applicant no. 1,2, 5 and 6 have been given promotion under the previous recruitment rules, i.e. on seniority-cum-fitness basis. As per the said recruitment rules, person who had completed 5 years of service as Stenographer Grade-III prior to 31.12.2003 were considered for promotion by the DPC. Since the applicants no. 3 and 4 had not completed 5 years on that date they were not found eligible for seniority-cum-fitness promotion under the old rules. Since the coming up of the new recruitment rules the next promotion as PA is only through LICE amongst those who have completed 5 years in the cadre of Stenographer. The respondents have also alleged (without citing any specific case) that under various court cases the Hon'ble Apex court has held that promotion/seniority will be given effective from the date of joining and not from the vacancy year.

4. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The argument of the applicants no. 3 and 4 is now limited to claiming their promotion from a back date in terms of the decision in the case of N.R. Parmar [(2012) 13 SCC 340]. This case, which was in the context of deciding inter-se seniority between promotees and direct recruits, the Hon'ble Apex Court had decided that the

seniority for direct recruits should be determined on the basis of the year in which such vacancies arose, and not on the basis of when the examination for such direct recruitment was conduct or the date of joining of such direct recruits. That decision cannot apply on the facts of this case. Hence, though it is unfortunate that the two remaining applicants could not be promoted earlier due to various reasons including pendency of cases before courts, giving them notional promotion from a back date cannot be justified on that ground. Though the applicants have claimed that they have annexed the decision of CAT, Bangalore in OA 181/2008, at Annexure- 12 of the OA, what they have annexed is a letter dated 13.04.2012 which is a copy of an unsigned request from Shri K. Sebastin to Shri A.N. Rai, Director HR, BSNL. In this letter, a request is made for giving the benefit of judgment of Hon'ble Tribunal at Bangalore, Hyderabad and Ernakulam to other similarly placed candidates by assigning notional dates of promotion as SDE w.e.f. six months from the date on which the competitive examinations were announced to be held. In the absence of a copy of the quoted judgment, we cannot make out whether the applicants of this case are similarly placed as those in the aforementioned case. Since no legal right accrued to the applicants on their passing the first stage of the examination in the year 2007, their request for granting notional promotion from the year 2006 cannot be allowed. The OA is, therefore, dismissed. No order as to costs.

**[Dinesh Sharma]
Administrative Member
Sr.k.**

**[Jayesh V. Bhairavia]
Judicial Member**