

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3514/2014

Reserved on 27.02.2019
Pronounced on 08.03.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Hemendra Kumar Tiwari,
Aged 29 years Unemployed
S/o Sh. Prem Narayan Tiwari,
R/o Parwati Puram Nagar,
Bashatpur, Gorakhpur,
U.P.-273004.

... Applicant

(By Advocate Mr. M.K. Bhardwaj)

VERSUS

1. Bharat Sanchar Nigam Limited,
Through the Chief General Manager,
Northern Telecom Region, 266,
Kidwai Bhawan, New Delhi.
2. The Addl. GM (MIS) and CPIO,
R. No. 29, IR Hall,
Eastern Court Complex,
Janpath, New Delhi-110001.

... Respondents

(By Advocate: Mr.Rahul Khurana for Ms. Shubhangi Tuli)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. M.K.Bhardwaj, counsel for applicant and Mr.Rahul Khurana for Ms. Shubhangi Tuli, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1. To direct the respondents to produce all the records of
"Recruitment of Junior Telecom Officers (Telecom.), Junior

Telecom Officers (Civil) and Junior Telecom Officers (Electrical) (1-11-2008-Rectt)" relating to the selection of

the applicant to the post of JTO (Telecom) including entire records of proceeding along with Rules for Selection and Answer Sheet (OMR) of the applicant.

- 8.2 To allow the OA and direct the respondents to show the Answer Sheet (ORM) to the applicant.
 - 8.3. To direct the respondents to declare a fresh Result of "Combined Recruitment for the posts of Engineering Assistant and Technician in Prasar Bharti Exam. 2013" on all India basis on behalf of the marks scored by the candidates.
 - 8.4. To direct the respondents No.1 to declare the Result of "Recruitment of Junior Telecom Officers (Telecom), Junior Telecom Officers (Civil) and Junior Telecom Officers (Electrical) (1/11/2008-Rectt)" after placing the applicant according to his rectified marks.
 - 8.5. To direct the respondents to place the applicant as selected candidates on the post of JTO (Telecom.) in accordance with the marks obtained by him after rectification of the result.
 - 8.6. To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case."
3. The relevant facts of the case are that applicant applied in response to the recruitment advertisement to the post of Junior Telecom Officers (Telecom), Junior Telecom Officers (Civil) and Junior Telecom Officers (Electrical) of the year 2008. The examination was held on 21.06.2009. The result was declared on 26.10.2009, but the applicant was not selected. That after declaration of the result some candidates brought to the notice of the respondents that there was a mistake with respect to answer key of question no. 16 in Section-C of Telecom paper which was investigated and rectified, as a result of the said exercise, it was found that 53 candidates who were declared

provisionally successful earlier were subsequently declared as unsuccessful and 86 new candidates were found to be qualified and declared successful. Some of the earlier above said 53 candidates filed OAs before this Tribunal. The said OAs were dismissed by this Tribunal vide order dated 09.05.2011 which was upheld by the Hon'ble Supreme Court vide order dated 20.07.2013 in SLP (C) No(s) 16372-16374/2012. The case of the applicant is that after the said order of the Hon'ble Supreme Court, he secured some information under RTI in 2014 and on the basis of the said reply secured by him; he has filed this OA seeking the above stated reliefs.

4. The counsel for the respondents vehemently and strenuously contended that the recruitment process is long over. As per the retention schedule relating to the said recruitment, the answer books are to be preserved only for one year and the results are to be preserved only for five years and that the examination related work like paper setting, evaluation of Optical Mark Reader (OMR), answer sheets and preparation of results were entrusted to a renowned Government agency and that around 3.57 lakhs applications were received and 2.90 lakhs candidates had appeared and that whatever rectification was carried out had been applied to all the candidates uniformly and that the applicant had secured 69.25 marks in both the results declared earlier on 26.10.2009 and later on January, 2010 whereas the cut off marks of the last successful candidate was 69.75, as such in view of these facts and in view of long delay, the relief prayed for by the applicant shall not be granted. We have perused the averments made by the respondents in their counter affidavit. He was

declared unsuccessful way back in 2009 but, however, he approached the Tribunal by this OA in 2014.

5. In view of the facts of this case, the applicant is a fence-sitter and is not entitled to relief prayed for. The law laid down by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others** (2015) 1 SCC 347) at para 22.2. and 22.3 is squarely applicable to the facts of this case. Para 22.2 and 22.3 of the judgment are extracted below:

"22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

6. In view of the above facts and circumstances of the case and in view of the law laid down by the Hon'ble Supreme Court extracted above, this OA is devoid of merit.

7. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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