

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00554/2018

Jabalpur, this Friday, the 27th day of September, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Dr.Mahesh Shukla, S/o Shri Krishna Kumar Shukla, aged about 55 years, Chief General Manager, M.P.Telemc Circle, Bhopal, R/o BSNL Bhawan, P&T Officers Enclave, Char Imli, Bhopal (MP)- APPLICANT

(By Advocate – Shri Manoj Sharma)

Versus

- 1. Union of India through its Chairman, Public Enterprises Selection Board, 502, Block No.14, Public Enterprises Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003**
- 2. Secretary, Department of Personnel & Training (Public Enterprises Selection Board), North Block, New Delhi-110 001**
- 3. Secretary, Ministry of Communications, Department of Telecommunications, North Block, New Delhi-110 001.**
- 4. Bharat Sanchar Nigam Limited, Through its Chairman-cum-Managing Director, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001.**
- 5. Dr.Biswajit Paul, Staff No.8176/HRMS No.198504500, General Manager (CM), Bhubhneswar, Odisha.**
- 6. Dr.Matthew P T, Staff No.8228/HRMS No.198605374, Chief General Manager, Kerala Telecom Circle, Thiruvananthpuram, Kerala**

- RESPONDENTS

**(By Advocate – Shri D.S.Baghel for respondents Nos. 1 & 3
Shri S.P. Singh for respondent No.4)**

(Date of reserving the order:24.07.2019)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by non-consideration of his case for selection to the post of Director (Consumer Mobility) {for brevity ‘**Director (CM)**’}, Bharat Sanchar Nigam Limited (for brevity ‘**BSNL**’).

2. The brief facts of the case as submitted by the applicant are as under:-

2.1 He is an Indian Telecom Service (for brevity ‘**ITS**’) officer of 1983 batch and presently working on the post of Chief General Manager, M.P. Telecom Circle, BSNL Bhopal.

2.2 As per the seniority list of ITS officers as on 01.01.2014 (Annexure A-2) he is senior to private- respondents Nos.5 and 6. His name is placed at serial No.265 in the said seniority list, while names of respondents Nos.5 and 6 are at serial Nos.272 and 309 respectively.

2.3 Vide order No.7/69/2017-PESB (Annexure A-3) respondents Nos.1 & 2 had issued an advertisement for the post of Director (CM) BSNL, which was going to be vacant on 01.07.2018.

2.4 He being eligible had timely applied for the said post.

2.5 The policy for selection to directoral post in Central Public Sector Enterprises (for brevity ‘**CPSE**’) (Annexure A-5) stipulates that if all the candidates are eligible for the post and having the same pay scale, then senior most be given preference.

2.6 When he came to know that his name has been excluded for the interview for the post of Director (CM) he represented on 08.06.2018 (Annexure A-6).

2.7 The respondent No.4 issued the letter dated 11.06.2018 (Annexure A-1) calling eight candidates, mentioned therein, including respondents nos.5 & 6, to report to the Chairman's office on 19.06.2018 for interview.

2.8 He again preferred a representation before respondent No.1. However, when he did not receive any response, he filed the present Original Application.

3. The applicant has prayed for the following reliefs in this Original Application:-

“(8.i) To call for the entire material and record pertaining to the aforesaid controversy for its kind perusal.

(8.ii) To command and direct the respondent-authorities to call applicant for interview to the post of Director (Consumer Mobility), BSNL and duly consider him;

(8.iii) To command and direct the respondent's authorities to appoint applicant to the post of Director (Consumer Mobility), BSNL along with all consequential benefits.

(8.iv) To award cost of instant lis to applicant.

(8.v) Award cost of the litigation in favour of applicant.”

4. The respondents Nos.1 & 3 in their reply have submitted as under:-

4.1 The selection process for vacancy in the post of Director (CM) in BSNL was initiated before the date of occurrence of vacancy. As the

vacancy was anticipated in view of the superannuation of the incumbent Shri R.K.Mittal on 30.06.2018 (hence date of vacancy was taken as 01.07.2018). Thereafter, after finalization of job description, the vacancy was circulated on 21.11.2017 vide circular No.7/69/2017-PESB (Annexure –R-4) with the Job Description.

4.2 Para VII of the Job Description stipulates that “incomplete applications and applications received after the stipulated time/date shall be REJECTED. The Board reserves the right to shortlist the candidates”. Further, in para 5(ii) of the application form the applicants are required to state the positions held by her/him during the last ten years upto the date of uploading of the vacancy circular on the website of PESB. The date of uploading the vacancy circular in the instant case was 21.11.2017.

4.3 In response to the vacancy circular, PESB received 65 applications including 20(twenty) from ITS officers. The applications received were examined and it has been observed that in case of the applicant his application was found to be incomplete as he did not fill the positions held by him up to the date of uploading of the vacancy circular. He had only stated the positions up to 07.11.2017. Accordingly, the applicant’s application was adjudged as incomplete and his candidature was rejected on the following grounds:- “The candidate has not mentioned positions held during the last ten years in para 5(ii) of the application upto the date of uploading the vacancy circular on the PESB website”.

4.4 There are other applicants – 4 under internal category, 2 under external and 5 under Central Government including the applicant, whose applications were rejected on the same grounds as mentioned above.

4.5 Thereafter a selection meeting was fixed on 19.06.2018 to consider selection for the post of Director (CM) BSNL. The said meeting has been postponed in view of the interim order dated 18.08.2018 passed in this Original Application.

5. The respondent No.4 has filed their reply stating that they are proforma party in this case. Short listing of candidates for the post of Director (CM) is done by Public Enterprise Selection Board (for brevity 'PESB'). No relief has been claimed against respondent No.4.

6. The applicant and respondents Nos. 1 & 3 have exchanged rejoinders and counter-reply in further three rounds, the last being filed on 11.07.2019 by respondents Nos. 1& 3.

7. Respondents Nos.1 & 3 have filed Annexures 1 to 6, Annexures 1 to 3 and Annexures 1 and 2 along with their reply filed on 29.06.2018, 09.10.2018 and 29.01.2019 respectively. For ease of reference these annexures are being referred to as annexures R/1 to R/11 respectively hereinafter.

7.1 The word 'Respondents' being used hereinafter refers to both respondents Nos.1&3, unless specifically mentioned otherwise.

8. In his rejoinder, the applicant has submitted as under:-

8.1 The applicant had given the details of experience of almost 18 years right from November 2017 to September 1999, in his application (Annexure A-8) which is more than the minimum requirement. He had also given his experience detail in 'Write Up' of the form.

8.2 The contention of the PESB is not correct that the date of uploading the vacancy circular was 21.11.2017 because it was available on website much before that and definitely on 07.11.2017. Since the candidate filled the date 7.11.2017 in experience column and the site allowed the compete filling of the application, means that vacancy was available on 07.11.2017 on website.

8.3 The applicant has tried to demonstrate the above point by stating that he applied for the post of Director (Technical) in another CPSE viz. Fertilizers and Chemicals Travancore Ltd., which was advertised by PESB, and uploaded on 21.05.2018. When he tried to fill up his experience details in Para 5(ii) and put up any date prior to 21.05.2018, the site did not proceed further and said that "Date must cover date of uploading the vacancy circular on PESB website i.e. 21.05.2018".

Screenshot of such a message is at Annexure A-9.

9. In subsequent pleadings, the respondents have submitted that the alert pop up feature as demonstrated in Annexure A-9 has been

introduced in May 2018. The application in the instant OA was filled up in November/December 2017, hence this feature was not available at that time.

9.1 Respondents have filed proof through Annexures R-8 and R-9 to demonstrate that the advertisement was uploaded on 21.11.2017. Further, NIC vide their letter dated 03.01.2019 (Annexure R-10) have confirmed that the said advertisement was uploaded on 21.11.2017 at 11:57:00 AM. Further, the applicant (User ID 5384) initiated the drafting of this application (No.9515) on 30.11.2017 at 11:23:04 AM and certified/ submitted on 18.12.2017 at 11:36 AM.

10. Heard the learned counsel for both the parties and perused the pleadings available on record.

11. Learned counsel for the applicant argued that the said advertisement (Annexure A-3) does not mention any date of the advertisement nor date of uploading of the advertisement.

11.1 The applicant has filled in the details of the positions held by him from 15.09.1999 to 07.11.2017 (Annexure A-8). Just because the respondents have wrongly claimed that the date of uploading of advertisement was 21.11.2017, the application has been rejected for not filling in the details of next two weeks. He avers that the advertisement was uploaded on 07.11.2017 or earlier.

12. Learned counsel for the respondents brought our attention to the documentary proof that the advertisement was uploaded on 21.11.2017. The application of the applicant has correctly been rejected as it was incomplete in that the details of experience up to the date of uploading of advertisement were not filled.

F I N D I N G S

13. We perused the PESB advertisement (Annexure A-3). There is no date of issue mentioned therein. This fact was fairly admitted by the learned counsel for the respondents.

14. Para 5(ii) of the application form (Annexure R/5) reads “Position held during the last ten years, up to the date of uploading the vacancy circular on the PESB website”.

15. Learned counsel for the applicant and respondents insist that the date of uploading of advertisement was 07.11.2017 (or earlier) and 21.11.2017 respectively.

16. Log details furnished by NIC (Annexure R-10) for the applicant for the said application indicate that the first time the drafting was initiated was on 30.11.2017 at 11:23 A.M. It was edited several times before finally submitting on 18.12.2017.

17. After completing the said application form, one is expected to check that the same has been filled correctly as per the guidelines given.

The application form at Para 5(ii) does mention that the “Position held during last ten years, up to date of uploading the vacancy circular on PESB website”. However, this date has not been explicitly mentioned anywhere in the advertisement or in the application form.

18. We feel that absence of such a date explicitly does create a situation where different people can interpret it differently. Therefore, this is definitely a defect in the advertisement/ application form. The respondents have tried to make amends to some degree by incorporating certain features in the software update of May,2018. Even this software update can not remove the defect of explicitly writing the date of advertisement or a record date.

19. In the present case, the gap, if any, is only of two weeks – between 07.11.2017 and 21.11.2017.

20. It is our considered opinion that the applicant can not be penalised for the mistake of the respondents in not specifically mentioning a record date up to which the details of posts held were required to be given.

21. In view of the above, the plea of the respondents that the application was adjudged as incomplete because the applicant has not mentioned positions held during the last ten years in Para 5(ii) of the application up to the date of uploading the vacancy circular on the PESB website is rejected.

22. It is an admitted position that the interview for the post of Director (CM) has not yet been held.

23. In view of the above, we dispose of this Original Application with a direction to the respondents to consider the application of the applicant as if it is complete and proceed further with the selection proceedings within a period of 90 (ninety) days from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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