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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH KOLKATA

OA No. 350/01311/2015

Date of Order: 03.09.2015

PRESENT:

THE HON'BLE MR. JUSTICE G.RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

1. Surojit Baksi, Son of Late Ranalal Baksi, aged about 43 years, residing at C/o. Prabir Kumar Chanda, Janapath Road, West Durganagar, Po. Rabindras Nagar, Kolkata-700065.
2. Soumendra Nath Sur, Son of Rabindra Nath Sur, aged about 38 years, residing at 44, Barasat Dasabujatala, PO. Chandannagar, Dist. Hooghly, Pin-712136.
3. Sisir Kumar Chakraborty, Son of Late Benoy Chakraborty, aged about 52 years, residing at P-399, Bandroni Park, Kalitala Free Primary chool, PO. Bansdroni, Kolkata-700070.

All are unemployed and ex servicemen.

.....Applicants

For the Applicant: Mr. T.K.Biswas, Counsel.

-Versus-

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhavan, Ashake House, New Delhi-110001.
2. The Chief General Manager, B.S.N.L, Telephone Bhawan, (2ND Floor), Calcutta-700001.
3. The Assistant General Manager (R.E), Calcutta Telephones, 8, Bentinck Street, Taher Mansion, 3rd Floor, Kolkata-700001.
4. The Public Information Officer, Bharat Sanchar Nigam Limited, Calcutta Telephones, Telephone Bhawan, 2nd floor, 34, B.B.D.Bag (South), Kolkata-700001.

.....Respondents

For the Respondents : Mr.S.Panda, Counsel.



ORDER

JUSTICE G.RAJASURIA, JM:

Heard both at this stage itself.

2. This OA has been filed seeking the following reliefs:

"(a) An order directed the respondents to set aside the order dated 30.07.2015 (Annexure-A/9) and also follow the Hon'ble Tribunal's order dated 12.3.2013 and further directing the respondents to give relaxation to the applicants i.e. ex servicemen for the selection of the post of TTA and thereafter issue the appointment letter in favour of the applicant with all benefits;

(b) An order directing the respondents to mention the ex servicemen posts and thereafter applicants' candidature would consider only on ex servicemen vacancies and further directing the respondents to issue the appointment letter in favour of the applicants;

(c) Leave may be granted to file this application jointly under Rules 4 (5) (a) of the CAT Rules, 1987;

(d) An order directing the respondents to produce all the relevant records of the case to this Hon'ble Court;

(e) Any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

(extracted as such)

3. The Learned Counsel for the Applicants inviting our attention to the order dated 12.03.2015 passed in the Original Application No. 1446 of 2013 (Surajit Bakshi & Ors vs. Union of India and Ors (BSNL)) by the Central Administrative Tribunal, Calcutta Bench, and the communication dated 01.06.2009 issued by the Assistant General Manager (Pers.-III), BSNL, would develop his arguments to the effect that the Recruitment process commenced during the year 2012 for the post of Telephone Technical Assistant



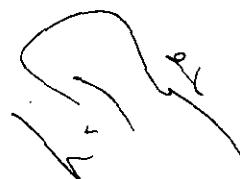
(TTA) in BSNL, Calcutta Office. All the three applicants are Diploma Holders in Elect. & Telecom having experience in Army. They are coming under the ex serviceman quota. Certain standards were fixed for recruitment to the post of TTA. No doubt, the applicants could not find themselves eligible in view of the cut off mark prescribed for the test. However, they made representation to the concerned authority to relax the standard as contemplated under Rule 6-A of the Ex Servicemen (Re-employment in Central Civil services and Posts) Rules, 1979, hereinafter called as Rules, 1979 which is extracted hereunder for ready reference:

"6-A. Lower standard for selection.

In the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them candidates belonging to the category of ex servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates."

4. But the authority of the BSNL did not heed to it even though vacancies were there to be filled up through ex-servicemen quota and the respondents are not taking up the steps under Rule 6 A ibid to relax the standard and fill up the vacancies. Accordingly, the Learned Counsel for the Applicants would pray for allowing the reliefs claimed in this OA.

Per contra in a bid to torpedo and pulverize the arguments advanced by the Learned Counsel for the Applicants, the Learned Counsel appearing for the Respondents would submit that the allegations made in the OA by the applicants, are not correct at



all. However, if, liberty is given, the Respondents Authorities would file a detailed reply as to how Rule 6-A, *ibid*, in the present facts and circumstances of the case, cannot be pressed into service. Subject to the above, the Learned Counsel appearing for the Respondents would further pyramid his arguments to the effect that in Rule 6A *ibid*, there is a clause which is important and significant for interpretation of the said rule to the effect that such relaxation should not affect the level of performance of the candidates. As such, according to him, if Rule 6-A, as such, is implemented in the present scenario, the standard of service provided by the BSNL would go down. He would also submit by applying the principle of ~~reductio ad absurdum~~ that in *stricto sensu* as per Rule 6A if the candidates are given appointment then the consequences would be writ large and the public interest would be affected and that would be antithetical to the interest of the BNSL. As such, rule 6A *ibid* cannot be implemented as of now. No doubt, the communicated dated 01.06.2009 issued by the Assistant General Manager, BSNL was there but it was pertaining to 2008 only. Taking into consideration the singularly singular situation prevailing at the that time that order was issued and thus, the same cannot be applied now. Therefore, the vacancies were de reserved for future years. Accordingly, he would pray for the dismissal of this OA.

5. The point for consideration is as to whether the BSNL already implemented the said Rule 6A or yet to implement ~~it~~.

Our mind is reminiscent and redolent of the trite proposition of law that the public authorities are expected to implement the law in *stricto sensu*. If there is failure on the part of



the said public authorities then orde in the nature of the writ of mandamus could be issued. Obviously and axiomatically, incontrovertibly and unarguably, it is clear that the CAT Act confers the power on the part of the CAT to issue direction on par with mandamus if it is apprised of the fact that the public authorities are not implementing the rule in filling up of the posts in Government or allied services. A mere running of the eye over Rule 6-A would exemplify and demonstrate, display and convey that at the first instance itself, the public authorities are not expected to depart from the original standard and make a mockery of the public employment. There is no second thought over it. However, the trite law is that the authorities cannot be compelled to reduce the requirements of the conditions provided in the Rules on the contrary, it is for the public authority to reduce the standard as per Rule 6-A to the extent possible taking into consideration the parameters involved in a particular year at the time of recruitment and relax the standard. As such, we are having no authority to give a positive direction as to what should be the actual norm and quantum of relaxation of the standard in respect of ex servicemen quota.

6. The Learned Counsel for the Applicants would explain and clarify that the authority while fixing the general standard for SC/ST candidates for ex servicemen's fixed a lower standar. Indisputably and indubitably, there are still vacancies under the ex servicemen quota relating to TTA post. The respondent authorities are not willing to apply rule 6-A and relax the standard for the fear of sacrificing the performance at the anvil of relaxing the standard of



the candidates. We would like to dispel the misunderstanding in the mind of the respondent authorities that relaxation should not be such so as to reduce the level affecting the performance in the public service. It is for the authorities to decide. The Learned Counsel for the Respondents would reiterate his stand that there should be an indication in the order of the CAT that the BSNL authorities could strictly adhere to the level of performance and thereafter, Rule 6-A of rules could be imposed by them. We have no quarrel over the above submission and as such the following direction is issued.

7. The BSNL authorities shall in accordance with Rule 6-A of the Re-employment in Central Civil services and Posts Rules, 1979, relax the standard to the extent possible without affecting the level of performance in letter and spirit within a period of eight weeks from the date of receipt of a copy of this order.

8. In the result, this OA stands disposed of. ~~No~~ costs.

(Jaya Das Gupta)
Admn. Member

(Justice G. Rajasuria)
Judicial Member

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